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939

No. 2559

*See briefs in 2543*

United States

# Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Monckton,  
Clerk.





**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. ~~14,275~~—14,735—14,892—15,131—15,569—  
15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutcheon, Olney and Willard, Its At-  
torneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon

thereafter as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes [1\*] with the addition of penalties.

PERCY V. LONG,

City Attorney,

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Six Thousand Six Hundred seventy-two and 55/100 (6,672.55) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the Bank of California National Association of San Francisco, California, to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said Bank of California National Association of San Francisco, California, as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court:

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Six Thousand Six Hundred seventy-two and 55/100 (6,672.55) Dollars as taxes out of the sums impounded *had* deposited in said bank as aforesaid.

Dated December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$6,672.55 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, CALIFORNIA, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,672.55, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and

appeals from said order to the United States Circuit Court of Appeals, and prays [4] that this, its petition for said appeal, may be allowed, and that a Transcript of the Record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$6,672.55 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Bank of California National Association of San Francisco, California, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Bank of California National Association of San Francisco, California, for the payment of said sum of \$6,672.55, as taxes, out of the sums deposited and impounded in said Bank of California [6] National Association of San Fran-



cisco, California, as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said District Court, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz.:

I.

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled Court directing the payment of the taxes levied and assessed against the above-named Bank of California National Association of San Francisco, California, as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$6,672.55 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Bank of California National Association of San Francisco, California, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Bank of California National Association of San Francisco, California, for the payment of said sum of \$6,672.55, as taxes, out of the sums deposited and impounded in said Bank of California National Association of San Francisco, California.

III

The Court erred in making said order and in hold-

ing and deciding that said taxes were assessed and levied in accordance [7] with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

#### IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Bank of California National Association of San Francisco, California, as aforesaid, were moneys in litigation in the possession of said Bank of California National Association of San Francisco, California, as receiver.

#### V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Bank of California National Association of San Francisco, California, as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled Court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Bank of California National Association of San Francisco, California, as receiver.

#### VIII.

The Court erred in making said order because it

appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Bank of California National Association of San Francisco, California, no [8] moneys were on deposit with said Bank of California National Association of San Francisco, California, on the first Monday in March, 1914.

IX.

The Court erred in making said order and in directing that the sum of \$6,672.55 be paid out of sums deposited in said Bank of California National Association of San Francisco, California, in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Bank of California National Association of San Francisco, California, in each of said actions.

X.

The Court was without jurisdiction to make said order, or any other directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Bank of California National Association of San Francisco, California, pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.



## XI.

The Court was without jurisdiction to make said or any orders directing the payment of taxes out of the moneys deposited by complainant with said Bank of California National Association of San Francisco, California, in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by [9] complainant with said Bank of California National Association of San Francisco, California, pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Bank of California National Association of San Francisco, California, pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

## XII.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Bank of California National Association of San Francisco, California, had paid the one per cent tax assessed against it for the fiscal year 1914-1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-

entitled Court be set aside and that an order be entered denying the aforesaid application.

Dated San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344 and 26.  
SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$6,672.55 be paid to the Tax Collector of the City and County

of San Francisco, State of California, out of certain sums deposited with BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, CALIFORNIA, subject to the orders of the above-entitled Court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,672.55, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon

shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a Judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hun-



dred (300) Dollars, lawful money of the United States, to be paid to the City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a Corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$6,672.55 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,672.55, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant,

Spring Valley Water Company, a Corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,  
[Seal] By S. P. EASTMAN,  
Vice-president.

By JOHN E. BEHAN,  
Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,  
[Seal] By JOHN H. ROBERTSON and  
FRANK M. HALL,  
Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praecipe [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$6,672.55 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Bank of California National Association of San Francisco, California, subject to the orders of the above-entitled court in the above-entitled actions. [16]

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors order permitting appeal, and

citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remains on



file and of record in the above-entitled casue, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

United States of America,—ss.

The President of the United States to City and County of San Francisco, a Municipal Corporation, the Tax Collector of said City and County, and Percy V. Long, City Attorney, attorney for said Tax Collector and for said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the District Court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, [19] a Corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$6,672.55 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Bank of California National Association of San Francisco, California, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "N." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543, etc.]**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in



the Transcript of the Record in said District Court;  
and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the Transcripts of the Records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the Transcript of the Record in action No. 2543 in the above-entitled court, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547—2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

At a stated term, to wit; the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present. The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,  
Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled

Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the Transcript of the Record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the Transcripts of the Records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the



said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

2  
No. 2558

*See books in 2593*  
United States

# Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Munckton,  
Clerk.



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. ~~14,275~~—14,735—14,892—15,131—15,569—  
15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a corporation,  
and McCutcheon, Olney and Willard, Its Attor-  
neys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding



therein, at the hour of 10 o'clock A. M. or as soon thereafter as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes [1\*] with the addition of penalties.

PERCY V. LONG,  
City Attorney,  
Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Four Thousand Six Hundred twenty-three & 71/100 (\$4,623.71) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the Bank of California National Association of San Francisco to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said Bank of California National Association of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court; which sums escaped assessment for the fiscal year 1913-14;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Four Thousand Six Hundred twenty-three and 71/100 (\$4,623.71) Dollars, as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated December 1st, 1914.

WM. C. VAN FLEET.

Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$4,623.71 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.71, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United

States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be [4] allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$4,623.71 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Bank of California National Association of San Francisco, California, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Bank of California National Association of San Francisco, California, for the payment of said sum of \$4,623.71, as taxes, out of the sums deposited and impounded in said Bank of Cali-

fornia National Association of San Francisco, California, as aforesaid, there is manifest error, in that the said complainant has been denied its just [6] rights by the order entered by said District Court, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz.:

I.

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Bank of California National Association of San Francisco, California, as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$4,623.71 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Bank of California National Association of San Francisco California, subject to the order of said court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Bank of California National Association of San Francisco, California, for the payment of said sum of \$4,623.71, as taxes, out of the sums deposited and impounded in said Bank of California National Association of San Francisco, California, as aforesaid.

## III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections. [7]

## IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in Bank of California National Association of San Francisco, California, as aforesaid, were moneys in litigation in the possession of said Bank of California National Association of San Francisco, California, as receiver.

## V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by Bank of California National Association of San Francisco, California, as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

## VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

## VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Bank of California National Association of San Francisco, California, as receiver.

VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which had escaped assessment for the fiscal year 1913-1914. [8]

IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Bank of California National Association of San Francisco, California, no moneys were on deposit with said Bank of California National Association of San Francisco, California, on the first Monday in March, 1913.

X.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Bank of California National Association of San Francisco, California, no moneys were on deposit with said Bank of California National Association of San Francisco, California, on the first Monday in March, 1913.

XI.

The Court erred in making said order and in directing that the sum of \$4,623.71 be paid out of sums deposited in said Bank of California National Association of San Francisco, California, in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in



said Bank of California National Association of San Francisco, California, in each of said actions.

## XII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Bank of California National Association of San Francisco, [9] California, pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

## XIII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Bank of California National Association of San Francisco, California, in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Bank of California National Association of San Francisco, California, pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in

question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Bank of California National Association of San Francisco, California, pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

XIV.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Bank of California National Association of San Francisco, California, had paid the one per cent tax assessed against it for the fiscal [10] year 1913-1914 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$4,623.71 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.71, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a

corporation, complainant in the above-entitled action has, on this [12] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a Corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [13]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our

heirs, successors, representatives and assigns firmly by these presents. [14]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a Corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$4,623.71 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.71, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a Corporation, shall prosecute such appeal to effect and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-President and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [15] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,

[Seal]

By S. P. EASTMAN,

Vice-president.

By JOHN E. BEHAN,

Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[Seal]

By JOHN H. ROBERTSON and

FRANK M. HALL,

Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeceptum [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a Transcript of the Record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$4,623.71 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Bank of California National Association of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a Corporation, in the prosecution of its appeal, [17] including petition for appeal, assignment of errors, order permitting appeal,

and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

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*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing eighteen (18) pages, numbered from 1 to 18 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the Praecipe for Transcript of Record, as the same remain on



file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing Transcript of Record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for Plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled  
Jan. 5, 1915. J. A. S.] [19] .

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

UNITED STATES OF AMERICA,—ss.

THE PRESIDENT OF THE UNITED STATES to  
CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, the TAX COL-  
LECTOR of Said City and County, and PERCY  
V. LONG, City Attorney, Attorney for Said Tax  
Collector and for Said City and County,  
GREETING:

YOU ARE HEREBY CITED and admonished to  
be and appear at a United States Circuit Court of  
Appeals, for the Ninth Circuit, to be holden at the  
City and County of San Francisco, State of Cali-  
fornia, on the 29th day of January, 1915, being within  
thirty days from the date hereof, pursuant to an  
order allowing an appeal filed in the Clerk's Office of  
the District Court of the United States, for the  
Northern District of California, Second Division,  
wherein Spring Valley Water Company, [20] a  
Corporation, complainant in said actions, is appel-  
lant, and you are appellees, to show cause, if any  
there be, why the order made and entered in said ac-  
tions, wherein and whereby it was ordered, as in said  
order allowing appeal mentioned, that the sum of  
\$4,623.71 be paid to the Tax Collector of the City and  
County of San Francisco, State of California, out of  
certain sums deposited with Bank of California  
National Association of San Francisco, subject to the  
orders of the above-entitled court in the above-en-  
titled actions, should not be corrected, and why  
speedy justice should not be done to the parties in  
that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [21]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG,

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation "M." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2558. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543, etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipu-

lation as to Facts is fully set out and contained in the Transcript of the Record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the Transcripts of the Records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the Transcript of the Record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Appellant.

PERCY V. LONG,  
City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547—2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.



At a stated term, to wit; the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,

Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the Transcript of the Record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555; 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the

said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.





No. 2557

*See briefs in 2543*  
United States

## Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

**Filed**

JAN 28 1915

**F. D. Munckton,**

Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. ~~14,275~~—14,735—14,892—15,131—15,569—  
15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutchen, Olney and Willard, Its Attor-  
neys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that on  
Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon<sup>4</sup>

thereafter as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November, is the last day permitted by law for the payment of said taxes [1\*] with the addition of penalties.

PERCY V. LONG,

City Attorney,

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Six thousand and ninety-eight and 11/100 (\$6,098.11) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the FIRST NATIONAL BANK OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said First National Bank of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Six Thousand and ninety-eight and 11/100 (6,098.11) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with FIRST NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.11, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for



said appeal, may be allowed, [4] and that a Transcript of the Record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Said Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said First National Bank of San Francisco for the payment of said sum of \$6,098.11, as taxes, out of the sums deposited and impounded in said First National Bank of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said District Court, and the said complainant hereby assigns and sets out separately and [6] particularly the following errors, viz:

**I.**

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named

First National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in First National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said First National Bank of San Francisco for the payment of said sum of \$6,098.11, as taxes, out of the sums deposited and impounded in said First National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said First National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said First National Bank of San Francisco as receiver.  
[7]

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and

levied upon certain sums received by said First National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said First National Bank of San Francisco as receiver.

#### VIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said First National Bank of San Francisco, no moneys were on deposit with said First National Bank of San Francisco on the first Monday in March, 1914.

#### IX.

The Court erred in making said order and in directing that the sum of \$6,098.11 be paid out of sums deposited in said First National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said First National Bank of San Francisco in each of said actions.

#### X.

The Court was without jurisdiction to make said



order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys [8] were deposited by complainant with said First National Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

## XI.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said First National Bank of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said First National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said First National Bank of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.



## XII.

The Court erred in making said order, because it appears from the undisputed facts of the case that said First National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1914-1915 under the provisions [9] of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,

A CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with FIRST NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.11, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, SPRING VALLEY WATER COMPANY,  
a Corporation, as principal, and MASSACHU-

SETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with FIRST NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled



court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.11, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, than this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-President and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,  
[Seal] By S. P. EASTMAN,

Vice-President.

By JOHN E. BEHAN,

Secretary.



MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[Seal] By JOHN H. ROBERTSON and  
FRANK M. HALL,

Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeceptum [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a Transcript of Record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, [16] including petition for appeal, assignment of errors, order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District of the United States, in and for the  
Northern District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the Praeceptum for Transcript of Record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing Transcript of Record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]                      WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Ten cents Internal Revenue stamps canceled Jan.  
5, 1915. J. A. S.]. [18]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

United States of America,—ss.

The President of the United States to City and  
County of San Francisco, a Municipal Corpora-  
tion, the Tax Collector of said City and County,  
and Percy V. Long, City Attorney for said Tax  
Collector and for said City and County, Greet-  
ing:

YOU ARE HEREBY CITED and admonished to  
be and appear at a United States Circuit Court of  
Appeals, for the Ninth Circuit, to be holden at the  
City and County of San Francisco, State of Cali-  
fornia, on the 29th day of January, 1915, being with-  
in thirty days from the date hereof, pursuant to an  
order allowing an appeal filed in the Clerk's Office  
of the District Court of the United States, for the  
Northern District of California, Second Division,  
wherein Spring Valley Water Company, a corpora-  
tion, complainant in said actions, is appellant, and  
you are appellees, to show cause, if any there be, why

the order made and entered [19] in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$6,098.11 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States Second Division, Northern District of California, Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation "L." Filed Jan. 2, 1915. W. B. Maling, Clerk. J. A. Schaertzer, Deputy Clerk.



[Endorsed]: No. 2557. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos.

14735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the Transcript of the Record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the Transcripts of the Records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the Transcript of the Record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and

to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547—2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

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At a stated term, to wit, the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant.

vs.

CITY AND COUNTY OF SAN FRANCISCO, a  
Municipal Corporation, and TAX COL-  
LECTOR OF SAID CITY AND COUNTY,  
Appellees.

**Order That Agreed Stipulation of Facts in Spring  
Valley Water Co. vs. City and County of S. F.  
may be Considered Part of Records in the  
Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned



for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant.

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,



WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the Transcript of the Record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]. Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

4  
No. 2556

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*See brief in 2543*  
United States

## Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

**Filed**

JAN 28 1915

F. D. Monckton,  
Clerk.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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INDEX TO THE PRINTED TRANSCRIPT OF  
RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. ~~14275~~—14,735—14,892—15,131—15,569—  
15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutchen, Olney and Willard, its attor-  
neys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled Court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon  
thereafter as counsel can be heard, the undersigned

will apply for an order in the above-entitled Court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes [1\*]

with the addition of penalties.

PERCY V. LONG,

City Attorney.

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
1,5326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

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\*Page-number appearing at foot of page of original certified Record.



**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Four Thousand Six Hundred twenty-three and 96/100 (\$4,623.96) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the FIRST NATIONAL BANK OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said THE FIRST NATIONAL BANK OF SAN FRANCISCO, as receivers and depositories in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Four Thousand, Six Hundred twenty-three and 96/100 (\$4,623.96) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.96, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be [4] allowed, and that a transcript of the rec-

ord and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant,  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.  
SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A Schaertzer, Special Master in Chancery in said actions, draw his check upon said First National Bank of San Francisco for the payment of said sum of \$4,623.96, as taxes, out of the sums deposited and impounded in said First National Bank of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said District Court, and the said complainant hereby assigns and sets out separately [6] and particularly the following errors, viz:

**I.**

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the



above-named First National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in First National Bank of San Francisco, subject to the order of said court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said First National Bank of San Francisco for the payment of said sum of \$4,623.96, as taxes, out of the sums deposited and impounded in said First National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said First National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said First National Bank of San Francisco as receiver.  
[7]

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and



levied upon certain sums received by said First National Bank of San Francisco as a receiver and depository in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

## VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

## VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said First National Bank of San Francisco as receiver.

## VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which had escaped assessment for the fiscal year 1913-1914.

## IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said First National Bank of San Francisco, no moneys were on deposit with said First National Bank of San Francisco on the first Monday in March, 1913.

## X.

The Court erred in making said order, because it appears from the undisputed facts of the case that

in action No. 15,569 of the above-entitled actions, referred to in the assessment to said First National Bank of San Francisco, no moneys were on [8] deposit with said First National Bank of San Francisco on the first Monday in March, 1913.

XI.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said First National Bank of San Francisco, no moneys were on deposit with said First National Bank of San Francisco on the first Monday in March, 1913.

XII.

The Court erred in making said order and in directing that the sum of \$4,623.96 be paid out of the sums deposited in said First National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said First National Bank of San Francisco in each of said actions.

XIII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said First National Bank of San Francisco pursuant to stipulations by the parties and orders of court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges col-

lected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

#### XIV.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited [9] by complainant with said First National Bank of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said First National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said First National Bank of San Francisco pursuant to any order of court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

#### XV.

The Court erred in making said order, because it appears from the undisputed facts of the case that said First National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1913-1914 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December, 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By. J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et  
al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, where-



in and whereby it was ordered that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with FIRST NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.96, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of



\$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COM-  
PANY, a Corporation, as principal and MASSA-  
CHUSETTS BONDING AND INSURANCE  
COMPANY, a Corporation organized under the laws  
of the State of Massachusetts, and duly authorized  
to execute bonds and undertakings in judicial pro-  
ceedings pending in the courts of the United States,  
as surety, are held and firmly bound unto the CITY  
AND COUNTY OF SAN FRANCISCO, a Municipal

Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with FIRST NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.96, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obliga-

tion is such that of the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a corporation, has caused these presents to be executed by its Vice-President and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,

[Seal] By S. P. EASTMAN,

Vice-president.

By JOHN E. BEHAN,

Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[Seal] By JOHN H. ROBERTSON and

FRANK M. HALL,

Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeceptum [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a Transcript of the Record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the imponded moneys.

(2) The order of Court directing that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, [16] including petition for appeal, assignment of errors, order permitting appeal,

and citation on appeal, the appeal bond, and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17, inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the Praecipe for Transcript of Record, as the same remain on



file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing Transcript of Record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for Plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled  
Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

UNITED STATES OF AMERICA,—ss.

The President of the United States to City and County of San Francisco, a Municipal Corporation, the Tax Collector of said City and County, and Percy V. Long, City Attorney, Attorney for said Tax Collector and for said City and County.  
Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's office of the District Court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, a corporation, complainant in said actions, is appellant, and [19] you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$4,623.96 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with First National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge.  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "K" Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2556. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in



the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled Court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547—2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monekton, Clerk.



At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,

Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the Transcript of the Record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and

agreed by and between the parties hereto that the said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water  
Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

No. 2555

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*see brief in 2543*  
United States

# Circuit Court of Appeals

For the Ninth Circuit.

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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## Transcript of Record.

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Upon Appeal from the United States District Court for the Northern District of California, Second Division.

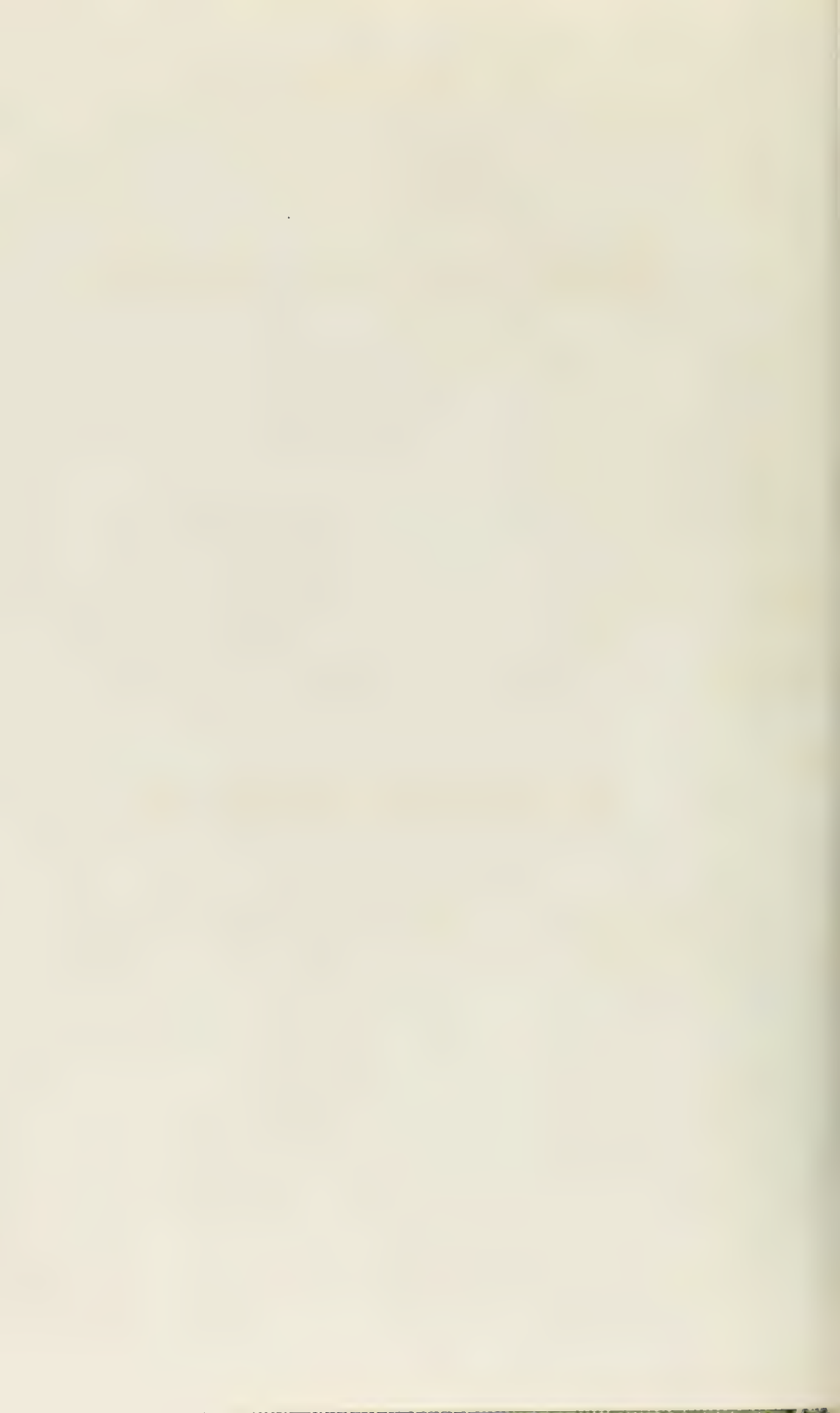
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**Filed**

JAN 28 1915

**F. D. Monckton,**





**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,275—14,735—14,892—15,131—15,569—  
15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutchen, Olney & Willard, Its Attor-  
neys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon

2            *Spring Valley Water Company vs.*

thereafter as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November [1\*] is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney.

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Six Thousand, Ninety-eight and  $84/100$  (\$6,098.84) Dollars to be paid out of sums deposited subject to order of this Court in the above-entitled actions in the Anglo and London Paris National Bank of San Francisco, to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said Anglo and London Paris National Bank of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Six Thousand, Ninety-eight and  $84/100$  (\$6,098.84) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.84, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this,

its petition for said appeal, [4] may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioners will ever pray.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.



**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Anglo and London Paris National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Anglo and London Paris National Bank of San Francisco for the payment of said sum of \$6,098.84, as taxes, out of the sums deposited and impounded in said Anglo and London Paris National Bank of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered [6] by said District Court, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz.:

**I.**

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the pay-

ment of the taxes levied and assessed against the above-named Anglo and London Paris National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Anglo and London Paris National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Anglo and London Paris National Bank of San Francisco for the payment of said sum of \$6,098.84, as taxes, out of the sums deposited and impounded in said Anglo and London Paris National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections. [7]

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Anglo and London Paris National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said Anglo and London Paris National Bank of San Francisco as receiver.

## V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Anglo and London Paris National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

## VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

## VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Anglo and London Paris National Bank of San Francisco as receiver.

## VIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Anglo and London Paris National Bank of San Francisco, no moneys were on deposit with said Anglo and London Paris National Bank of San Francisco on the first Monday in March, 1914.

## IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Anglo and London Paris National Bank of San Francisco, no moneys were on

deposit with said Anglo and London Paris National Bank of San Francisco on the first Monday in March, 1914. [8]

X.

The Court erred in making said order and in directing that the sum of \$6,098.84 be paid out of sums deposited in said Anglo and London Paris National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Anglo and London Paris National Bank of San Francisco in each of said actions.

XI.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Anglo and London Paris National Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Anglo and London Paris National Bank of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the



case that said moneys were deposited by complainant with said Anglo and London Paris National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be [9] repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts should be returned to the persons entitled thereto, and were not deposited in said Anglo and London Paris National Bank of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

### XIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Anglo and London Paris National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1914-1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant,

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.



[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,624.47, as taxes, out of the sums de-

posited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COM-  
PANY, a Corporation, as principal, and MASSA-  
CHUSETTS BONDING AND INSURANCE  
COMPANY, a Corporation, organized under the  
laws of the State of Massachusetts, and duly author-  
ized to execute bonds and undertakings in judicial  
proceedings pending in the courts of the United  
States, as surety, are held and firmly bound unto the  
CITY AND COUNTY OF SAN FRANCISCO, a  
Municipal Corporation, and the Tax Collector of said  
city and county, in the full and just sum of Three  
Hundred (300) Dollars, lawful money of the United  
States, to be paid to the said City and County of San  
Francisco, a Municipal Corporation, and the Tax  
Collector of said city and county, to which payment  
well and truly to be made, we bind ourselves and each  
of us, jointly and severally, and our and each of our

heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.84, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,  
[Seal] By S. P. EASTMAN,  
Vice-president.  
By JOHN E. BEHAN,  
Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,  
[Seal] By JOHN H. ROBERTSON and  
FRANK M. HALL,  
Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeceptum [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Anglo and London Paris National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, [16] including petition for appeal, assignment of errors, order permitting appeal,

and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file

and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled  
Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

United States of America,—ss.

The President of the United States to City and County of San Francisco, a Municipal Corporation, the Tax Collector of Said City and County, and Percy V. Long, City Attorney, Attorney for Said Tax Collector and for Said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the District Court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, [19] a corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Anglo and London Paris National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California, Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "J." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2555. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in

the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG.

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547—2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: the Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,

Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the



said Agreed Stipulation as to facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed] : Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

No. 2554

*See briefs in 2543*  
United States

# Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Monckton,

Clerk.



**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.]**

To Spring Valley Water Company, a corporation,  
and McCutchen, Olney & Willard, its attorneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; To the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon  
thereafter as counsel can be heard, the undersigned  
will apply for an order in the above-entitled court

2            *Spring Valley Water Company vs.*

directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November [1\*] is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney.

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant,  
Tax Collector in and for the City and County of San

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\*Page-number appearing at foot of page of original certified Record.

Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Four Thousand Six Hundred Twenty-four & 47/100 (\$4,624.47) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the Anglo and London Paris National Bank of San Francisco to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said The Anglo and London Paris National Bank of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court; which sums escaped assessment for the fiscal year 1913-14;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Four Thousand, Six Hundred Twenty-four and 47/100 (\$4,624.47) Dollars, as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [3]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant.

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,624.47, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be [4]

allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant,  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant.

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Anglo and London Paris National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Anglo and London Paris National Bank of San Francisco for the payment of said sum of \$4,624.47, as taxes, out of the sums deposited and impounded in said Anglo and London Paris National Bank of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said district court, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz: [6]

**I.**

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said City and County, for an

order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Anglo and London Paris National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Anglo and London Paris National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Anglo and London Paris National Bank of San Francisco for the payment of said sum of \$4,624.47, as taxes, out of the sums deposited and impounded in said Anglo and London Paris National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in Anglo and London Paris National Bank of San Francisco, as aforesaid, were moneys in [7] litigation in the possession of said Anglo and London Paris National Bank of San Francisco as receiver.



## V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by Anglo and London Paris National Bank of San Francisco as a receiver and depository in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

## VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

## VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Anglo and London Paris National Bank of San Francisco as receiver.

## VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which had escaped assessment for the fiscal year 1913-1914.

## IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Anglo and London Paris National Bank of San Francisco, no moneys were on deposit with said Anglo and London Paris National Bank of San Francisco on the first Monday in March, 1913. [8]



X.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 15,569 of the above-entitled actions, referred to in the assessment to said Anglo and London Paris National Bank of San Francisco, no moneys were on deposit with said Anglo and London Paris National Bank of San Francisco on the first Monday in March, 1913.

XI.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Anglo and London Paris National Bank of San Francisco, no moneys were on deposit with said Anglo and London Paris National Bank of San Francisco on the first Monday in March, 1913.

XII.

The Court erred in making said order and in directing that the sum of \$4,624.47 be paid out of sums deposited in said Anglo and London Paris National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Anglo and London Paris National Bank of San Francisco in each of said actions.

XIII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were de-

posited by complainant with said Anglo and London Paris National Bank of San Francisco pursuant [9] to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

#### XIV.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Anglo and London Paris National Bank of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Anglo and London Paris National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Anglo and London Paris National Bank of San Francisco pursuant to any order of court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

XV.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Anglo and London Paris National Bank of San Francisco had paid [10] the one per cent tax assessed against it for the fiscal year 1913-1914 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant,  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.  
SPRING VALLEY WATER COMPANY, a Cor-  
poration,  
Complainant,  
vs.  
CITY AND COUNTY OF SAN FRANCISCO  
et al.,  
Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$6,098.84 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.84, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a Corporation, complainant in the above-entitled action has, on this [12] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [13]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COM-  
PANY, a Corporation, as principal, and MASSA-  
CHUSETTS BONDING AND INSURANCE



COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [14]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it

was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,624.47, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a Corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [15] these presents to be executed by its Attorneys-in-fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,  
[Seal] By S. P. EASTMAN,  
Vice-president.

By JOHN E. BEHAN,  
Secretary.

MASSACHUSETTS, BONDING AND  
INSURANCE COMPANY,  
[Seal] By JOHN H. ROBERTSON and  
FRANK M. HALL,  
Attorneys-in-fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeceptum [for Transcript of Record.]**

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-

entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a Corporation, in the prosecution of its appeal, including [17] petition for appeal, assignment of errors, order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, WALTER B. MALING, Clerk of the District  
Court of the United States, in and for the Northern

District of California, do hereby certify the foregoing eighteen (18) pages, numbered from 1 to 18 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled  
Jan. 5, 1915. J. A. S.] [19]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original).]**

United States of America,—ss.

The President of the United States to City and  
County of San Francisco, a Municipal Corpora-  
tion, the Tax Collector of Said City and County,  
and Percy V. Long, City Attorney, Attorney for  
Said Tax Collector and for Said City and  
County, Greeting:

YOU ARE HEREBY CITED and admonished to  
be and appear at a United States Circuit Court of  
Appeals, for the Ninth Circuit, to be holden at the  
City and County of San Francisco, State of Califor-  
nia, on the 29th day of January, 1915, being within  
thirty days from the date hereof, pursuant to an or-  
der allowing an appeal filed in the clerk's office of  
the District Court of the United States, for the  
Northern District of California, Second Division,  
wherein Spring Valley Water Company, [20] a  
corporation, complainant in said actions, is appel-

lant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$4,624.47 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Anglo and London Paris National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [21]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,735—14,892—15,131—15,569 15,344 and 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "J." Filed Jan. 2, 1915. W. B. Maling Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2554. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547-2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No.

14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled Court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and

to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

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At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.



Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a  
Municipal Corporation, and TAX COL-  
LECTOR OF SAID CITY AND COUNTY,  
Appellees.

**Order That Agreed Stipulation of Facts in Spring  
Valley Water Co. vs. City and County of S. F.  
may be Considered Part of Records in the  
Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley

Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated: Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water  
Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550,  
2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559.  
United States Circuit Court of Appeals for the  
Ninth Circuit. Spring Valley Water Company, a  
Corporation, Appellant, vs. City and County of San  
Francisco et al., Respondents. Stipulation. Filed  
Jan. 12, 1915. F. D. Monckton, Clerk.









7  
No. 2553

*See brief in 2553*  
United States

# Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Monckton,  
Clerk.



**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutchen, Olney & Willard, Its Attorneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon

2                    *Spring Valley Water Company vs.*

thereafter as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November, [1\*] is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,  
City Attorney,  
Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk.[2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.



**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy v. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Four Thousand four hundred fourteen & 70/100 (4,414.70) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the Crocker National Bank of San Francisco to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said Crocker National Bank of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Four thousand four hundred fourteen and 70/100 (4,414.70) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with CROCKER NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,414.70, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its

petition for said appeal, may be allowed, [4] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Crocker National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Crocker National Bank of San Francisco for the payment of said sum of \$4,414.70, as taxes, out of the sums deposited and impounded in said Crocker National Bank of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said [6] District Court, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz.:

**I.**

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named



Crocker National Bank of San Francisco as receiver and repository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Crocker National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Crocker National Bank of San Francisco for the payment of said sum of \$4,414.70, as taxes, out of the sums deposited and impounded in said Crocker National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and [7] deciding that said moneys, deposited in said Crocker National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said Crocker National Bank of San Francisco as receiver.

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and



levied upon certain sums received by said Crocker National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled Court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Crocker National Bank of San Francisco as receiver.

#### VIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Crocker National Bank of San Francisco, no moneys were on deposit with said Crocker National Bank of San Francisco on the first Monday in March, 1914.

#### IX.

The Court erred in making said order and in directing that the sum of \$4,414.70 be paid out of sums deposited in said Crocker National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Crocker National Bank of [8] San Francisco in each of said actions.

X.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Crocker National Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XI.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Crocker National Bank of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Crocker National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Crocker National Bank of San Francisco pursuant to any order of court direct-

ing that said moneys should be held subject to the order of the Court in the above-entitled action. [9]

XII.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Crocker National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1914-1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with CROCKER NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,414.70, as taxes out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.



IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASS-



ACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with CROCKER NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and

wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,414.70, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,

[Seal]      By S. P. EASTMAN,

Vice-President.

By JOHN E. BEHAN,

Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[Seal]      By JOHN H. ROBERTSON, and

FRANK M. HALL,

Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeipce [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of court directing that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Crocker National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, [16] order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD, GREENE,  
Solicitors for Complainant.  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision. ,*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, WALTER B. MALING, Clerk of the District  
Court of the United States, in and for the Northern  
District of California, do hereby certify the forego-

ing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled  
Jan. 5, 1915. J. A. S.] [18]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original).]**

United States of America,—ss.

The President of the United States to City and  
County of San Francisco, a Municipal Corpora-  
tion, the Tax Collector of said City and County,  
and Percy V. Long, City Attorney, Attorney for  
said Tax Collector and for said City and County,  
Greeting:

YON ARE HEREBY CITED and admonished to  
be and appear at a United States Circuit Court of  
Appeals for the Ninth Circuit, to be holden at the  
City and County of San Francisco, State of Califor-  
nia, on the 29th day of January, 1915, being within  
thirty days from the date hereof, pursuant to an  
order allowing an appeal filed in the Clerk's Office of  
the District Court of the United States, for the  
Northern District of California, Second Division,  
wherein Spring Valley Water Company, [19] a  
corporation, complainant in said actions, is appel-

lant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$4,414.70 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Crocker National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG,

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "H." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2553. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547-2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543, etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in action Nos.

14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and

to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Appellant.

PERCY V. LONG,  
City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

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At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.



Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a  
Municipal Corporation, and TAX COL-  
LECTOR OF SAID CITY AND COUNTY,  
Appellees.

**Order That Agreed Stipulation of Facts in Spring  
Valley Water Co. vs. City and County of S. F.  
may be Considered Part of Records in the  
Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned

for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553,  
2554, 2555, 2556, 2557, 2558, 2559.

SPRING VALLEY WATER COMPANY a Cor-  
poration,

Appellant

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories,

subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of

California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

No. 2552

*See briefs in 2548*  
United States

## Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Munckton,

Clerk.





**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. ~~14,275~~—14,735—14,892—15,131—15,569—  
15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutchen, Olney & Willard, Its Attorneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M. or as soon  
thereafter as counsel can be heard, the undersigned

2            *Spring Valley Water Company vs.*

will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November [1\*] is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney,

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Two Thousand, two hundred ninety-eight and 29/100 (\$2,298.29) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the Crocker National Bank of San Francisco to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said the Crocker National Bank of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court; which sums escaped assessment for the fiscal year 1913-14;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Two Thousand, two hundred ninety-eight and 29/100 (\$2,298.29) Dollars, as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with CROCKER NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$2,298.29, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its peti-

tion, for said appeal, may be allowed, [4] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.



**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Crocker National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Crocker National Bank of San Francisco for the payment of said sum of \$2,298.29, as taxes, out of the sums deposited and impounded in said Crocker National Bank of San Francisco, as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said District Court, and the said complainant hereby assigns [6] and sets out separately and particularly the following errors, viz.:

**I.**

The court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled Court directing the payment of the taxes levied and assessed against the above-

named Crocker National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Crocker National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Crocker National Bank of San Francisco for the payment of said sum of \$2,298.29, as taxes, out of the sums deposited and impounded in said Crocker National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Crocker National Bank of San Francisco, as aforesaid, were moneys in litigation in the [7] possession of said Crocker National Bank of San Francisco as receiver.

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and

levied upon certain sums received by said Crocker National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Crocker National Bank of San Francisco as receiver.

#### VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which had escaped assessment for the fiscal year 1913-1914.

#### IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Crocker National Bank of San Francisco, no moneys were on deposit with said Crocker National Bank of San Francisco on the first Monday in March, 1913.

#### X.

The Court erred in making said order, because it appears [8] from the undisputed facts of the case that in action No. 26 of the above-entitled actions,

referred to in the assesment to said Crocker National Bank of San Francisco, no moneys were on deposit with said Crocker National Bank of San Francisco on the first Monday in March, 1913.

XI.

The Court erred in making said order and in directing that the sum of \$2,298.29 be paid out of sums deposited in said Crocker National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Crocker National Bank of San Francisco in each of said actions.

XII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Crocker National Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XIII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Crocker National Bank of San Francisco in action No. 15,344 of the above-entitled actions, because it



appears from the undisputed facts of the case that said moneys were deposited by complainant with said Crocker National Bank of [9] San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Crocker National Bank of San Francisco pursuant to any order of court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

#### XIV.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Crocker National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1913-1914, under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled Court be set aside and that an order be entered denying the aforesaid application.



Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.  
SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with CROCKER NATIONAL BANK OF SAN FRANCISCO, subject

to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$2,298.29, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a Corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a Corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our

heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a Corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with CROCKER NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$2,298.29, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a Corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VAL-



LEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,  
[Seal] By S. P. EASTMAN,  
Vice-president.  
By JOHN E. BEHAN,  
Secretary.

MASSACHUSETTS BONDING AND  
INSURANCE COMPANY,  
[Seal] By JOHN H. ROBERTSON and  
FRANK M. HALL,  
Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Praeceptum [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of court directing that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Crocker National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a Corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, order permitting [16] ap-

peal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed] Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration.

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I. WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17, inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecept for transcript of record, as the same remain on

file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that of the foregoing paid by Messrs. McCutchen, Olney & Willard, Attorneys for Plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Cancelled  
Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation.

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

United States of America,—ss.

The President of the United States to City and County of San Francisco, a Municipal Corporation, the Tax Collector of said City and County, and Percy V. Long, City Attorney, Attorney for said Tax Collector and for said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the District Court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, [19] a corporation, complainant in said action, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$2,298.29 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Crocker National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,725—14,892—15,131—15,569 15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "G." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2552. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547-2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543, etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulations as to Facts; and,

Whereas, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in

the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding: Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY and COUNTY,

Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.



**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555; 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the



said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

No. 2551

*One brief in 2543*  
United States

## Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

**Filed**

JAN 28 1915

**F. D. Monckton,**  
Clerk.



No. 2551

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corpora-  
tion, and McCutcheon, Olney and Willard, Its  
Attorneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You and each of you will please take notice that on  
Monday, the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, judge presiding there-  
in, at the hour of 10 o'clock A. M., or as soon there-

2            *Spring Valley Water Company vs.*

after as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said [1\*] taxes are due, have not been paid and that Monday, the 30th day of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,  
City Attorney,  
Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Four Thousand, Four Hundred Fourteen and 45/100 (\$4,414.45) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Four Thousand, Four Hundred and Fourteen and 45/100 (\$4,414.45) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,414.45, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United

States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be allowed [4] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Said Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Wells Fargo Nevada National Bank of San Francisco for the payment of said sum of \$4,414.45, as taxes, out of the sums deposited and impounded in said Wells Fargo Nevada National Bank of San Francisco, as aforesaid, there is

manifest error, in that the said complainant has been denied its just rights by the order entered by said District Court, and the said complainant [6] hereby assigns and sets out separately and particularly the following errors, viz.:

I.

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Wells Fargo Nevada National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Wells Fargo Nevada National Bank of San Francisco, subject to the order of said court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Wells Fargo Nevada National Bank of San Francisco for the payment of said sum of \$4,414.45, as taxes, out of the sums deposited and impounded in said Wells Fargo Nevada National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and

levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections. [7]

#### IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Wells Fargo Nevada National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said Wells Fargo Nevada National Bank of San Francisco, as receiver.

#### V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Wells Fargo Nevada National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Wells Fargo Nevada National Bank of San Francisco as receiver.

#### VIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to



said Wells Fargo Nevada National Bank of San Francisco, no moneys were on deposit with said Wells Fargo Nevada National Bank of San Francisco on the first Monday in March, 1914.

IX.

The Court erred in making said order and in directing that the sum of \$4,414.45 be paid out of sums deposited in said Wells Fargo Nevada National Bank of San Francisco in the above-entitled [8] actions and in not directing or specifying what sum should be paid out of the sum deposited in said Wells Fargo Nevada National Bank of San Francisco in each of said actions.

X.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Wells Fargo Nevada National Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or in the event that the charges collected by Complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XI.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Wells Fargo Nevada National Bank of San Francisco in

action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Wells Fargo Nevada National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Wells Fargo Nevada National Bank of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court [9] in the above-entitled action.

## XII.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Wells Fargo Nevada National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1914-1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the first day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO

NEVADA NATIONAL BANK of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,414.45, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and which said petition it has as prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond



will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, SPRING VALLEY WATER COM-  
PANY, a Corporation, as principal, and MASSA-  
CHUSETTS BONDING AND INSURANCE  
COMPANY, a Corporation organized under the laws  
of the State of Massachusetts, and duly authorized  
to execute bonds and undertakings in judicial pro-  
ceedings pending in the courts of the United States,  
as surety, are held and firmly bound unto the CITY  
AND COUNTY OF SAN FRANCISCO, a muni-  
cipal corporation, and the Tax Collector of said city  
and county, in the full and just sum of Three Hun-  
dred (\$300) Dollars, lawful money of the United



States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums, deposited with WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above entitled court in the above entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,414.45, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall

prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,  
[Seal] By S. P. EASTMAN,  
Vice-President.

By JOHN E. BEHAN,  
Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,  
[Seal] By JOHN H. ROBERTSON, and  
FRANK M. HALL,  
Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk [15]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praecipe [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled Court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, order permitting '[16] ap-

peal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Tran-  
script of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain

on file and of record in the above-entitled cause, and that the same constitute the record of appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,  
Clerk.

By J. A. SCHAEERTZER,  
Deputy Clerk.

[Ten cents Internal Revenue Stamps Canceled  
Jan 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.



**Citation [on Appeal (Original)].**

United States of America,—ss:

The President of the United States to City and County of San Francisco, a municipal corporation, the Tax Collector of said City and County, and Percy V. Long, City Attorney, Attorney for said Tax Collector and for said City and County. Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the district court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, [19] a corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$4,414.45 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable William C. Van Fleet,  
United States District Judge for the Northern Dis-  
trict of California, this 2d day of January, 1915.

WM. C. VAN FLEET,

United States District Judge. [20]

Service of the within Citation and receipt of a  
copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: No. 14,735—14,892—15,131—15,569—  
15,244 and No. 26. In the District Court of the United  
States, Second Division, Northern District of Cal-  
ifornia. Spring Valley Water Company, a Corpora-  
tion, Complainant, vs. City and County of San Fran-  
cisco et al., Defendants. Citation "F." Filed Jan.  
2, 1915. W. B. Maling, Clerk. J. A. Schaertzer,  
Deputy Clerk.

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[Endorsed]: No. 2551. United States Circuit  
Court of Appeals for the Ninth Circuit. Spring  
Valley Water Company, a Corporation, Appellant,  
vs. City and County of San Francisco, a Municipal  
Corporation and the Tax Collector of said City and  
County, Appellees. Transcript of Record. Upon  
Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth District.*

Nos. 2547-2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipu-

lation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled Court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.]



At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY, Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Fran-



cisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion it is **FURTHER ORDERED** that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914,

the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to Facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the ma-

terial facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water  
Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

10  
No. 2550

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*See brief in 2543*  
United States

## Circuit Court of Appeals

For the Ninth Circuit.

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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## Transcript of Record.

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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**Filed**

JAN 28 1915

**F. D. Monckton,**  
Clerk.





No. 2550

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes etc.].**

To Spring Valley Water Company a Corporation,  
and McCutchen, Olney and Willard, Its Attor-  
neys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to the  
Union Trust Company of San Francisco; to the Mer-  
cantile National Bank of San Francisco; to the Bank  
of California National Association of San Francisco;  
to the Wells Fargo Nevada Bank of San Francisco:

You and each of you will please take notice that on  
Monday, the 30th day of November, 1914, in the above-  
entitled court and division, before the Hon. WILL-  
IAM C. VAN FLEET, Judge presiding therein, at  
the hour of 10 o'clock A. M. or as soon thereafter as  
counsel can be heard, the undersigned will apply for



an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said [1\*] taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,  
City Attorney.

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

SPRING VALLEY WATER COMPANY, a Corporation,  
Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,  
Defendants.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San

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\*Page-number appearing at foot of page of original certified Record.

Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Two Thousand, Two Hundred Ninety-eight & 16/100 (\$2,298.16) Dollars to be paid out of sums deposited subject to order of this Court in the above-entitled actions in the WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court; which sums escaped assessment for the fiscal year 1913-14.

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Two Thousand, Two Hundred Ninety-eight and 16/100 (\$2,298.16) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$2,298.16, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this,

its petition for said appeal, may be allowed, [4] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corpo-  
ration,

Complainant

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Wells Fargo Nevada National Bank of San Francisco for the payment of said sum of \$2,298.16, as taxes, out of the sums deposited and impounded in said Wells Fargo Nevada National Bank of San Francisco as aforesaid, there is manifest error, in



that the said complainant has been denied its just rights by the order entered by said district court, and the said complainant [6] thereby assigns and sets out separately and particularly the following errors, viz:

I.

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said City and County, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Wells Fargo Nevada National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Wells Fargo Nevada National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Wells Fargo Nevada National Bank of San Francisco for the payment of said sum of \$2,298.16, as taxes, out of the sums deposited and impounded in said Wells Fargo Nevada National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and

levied in accordance with Section 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

#### IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Wells Fargo Nevada [7] National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said Wells Fargo Nevada National Bank of San Francisco as receiver.

#### V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Wells Fargo Nevada National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Wells Fargo Nevada National Bank of San Francisco as receiver.

#### VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which

had escaped assessment for the fiscal year 1913-1914.

IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Wells Fargo Nevada National Bank of San Francisco, no moneys were on deposit with said Wells Fargo Nevada National Bank of San Francisco on the first Monday in March, 1913. [8].

X.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Wells Fargo National Bank of San Francisco, no moneys were on deposit with said Wells Fargo Nevada National Bank of San Francisco on the first Monday in March, 1913.

XI.

The Court erred in making said order and in directing that the sum of \$2,298.16 be paid out of sums deposited in said Wells Fargo Nevada National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Wells Fargo Nevada National Bank of San Francisco in each of said actions.

XII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Wells Fargo Nevada National

Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

### XIII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Wells Fargo Nevada National Bank of San [9] Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Wells Fargo Nevada National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Wells Fargo Nevada National Bank of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

### XIV.

The Court erred in making said order, because it appears from the undisputed facts of the case that

said Wells Fargo Nevada National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1913-1914 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—

26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.



**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$2,298.16, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COM-  
PANY, a Corporation, as Principal, and MASSA-  
CHUSETTS BONDING AND INSURANCE  
COMPANY, a Corporation organized under the laws

of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further or-

dered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$2,298.16, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY.

[Seal]

By S. P. EASTMAN,

Vice-President.

By JOHN E. BEHAN,

Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY.

[Seal] By JOHN H. ROBERTSON and

FRANK M. HALL,

Attorneys in Fact.



The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14735—14892—15131—15569—15344—26.

SPRING VALLEY WATER COMPANY, a Corpo-  
ration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.

Defendants.

**Fraecipe [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.



(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, [16] order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the forego-

ing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
et al.,

Defendants.

**Citation [on Appeal (Original)].**

United States of America,—ss.

THE PRESIDENT OF THE UNITED STATES  
to CITY AND COUNTY OF SAN FRAN-  
CISCO, a Municipal Corporation, the TAX  
COLLECTOR of said City and County, and  
PERCY V. LONG, City Attorney, Attorney for  
said Tax Collector and for said City and County,  
Greeting:

YOU ARE HEREBY CITED and admonished to  
be and appear at a United States Circuit Court of  
Appeals for the Ninth Circuit, to be holden at the  
City and County of San Francisco, State of Califor-  
nia, on the 29th day of January, 1915, being within  
thirty days from the date hereof, pursuant to an  
order allowing an appeal filed in the Clerk's Office of  
the District Court of the United States, for the  
Northern District of California, Second Division,  
wherein Spring Valley Water Company, [19] a  
corporation, complainant in said actions, is appellant,  
and you are appellees, to show cause, if any there be,  
why the order made and entered in said actions,  
wherein and whereby it was ordered, as in said order  
allowing appeal mentioned, that the sum of \$2,298.16  
be paid to the Tax Collector of the City and County  
of San Francisco, State of California, out of certain  
sums deposited with Wells Fargo Nevada National  
Bank of San Francisco, subject to the orders of the  
above-entitled court in the above-entitled actions,  
should not be corrected, and why speedy justice  
should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: No. 14,735, 14,892, 15,131, 15,569, 15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "E." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No 2550. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division. Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to fact; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in



the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY, Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is **FURTHER ORDERED**, that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2450—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

**SPRING VALLEY WATER COMPANY**, a Corporation,

Appellant,

vs.

**CITY AND COUNTY OF SAN FRANCISCO** et al.,  
Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914,

the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to facts contains all the ma-

terial facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water  
Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551  
2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit. Spring Valley Water Company, a corporation,  
Appellant, vs. City and County of San Francisco et  
al., Respondents. Stipulation Filed Jan 12, 1915.  
F. D. Monckton, Clerk.



No. 2549

*See brief in 2543*  
United States

# Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

**Filed**

JAN 28 1915

**F. D. Monckton,**  
Clerk.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos 14,735—14,892—15,131—15,569—15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a corporation,  
and McCutchen, Olney and Willard, its attorneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to the  
Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge, presiding  
therein, at the hour of 10 o'clock A. M. or as soon  
thereafter as counsel can be heard, the undersigned  
will apply for an order in the above-entitled court  
directing the payment of the taxes levied and assessed

2                    *Spring Valley Water Company vs.*

against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said [1\*] taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney.

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff.

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San

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\*Page-number appearing at foot of page of original certified Record.

Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Six Thousand and Ninety-eight & 20/100 (\$6,098.20) Dollars be paid out of sums deposited subject to order of this court in the above-entitled actions in the UNION TRUST COMPANY OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said UNION TRUST COMPANY OF SAN FRANCISCO as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Six Thousand and Ninety-eight and 20/100 (\$6,098.20) Dollars, as taxes out of the sums deposited in said bank as aforesaid.

Dated: December 1st 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 1, 1914. Walter B. Mal-  
ling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with UNION TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.20, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be allowed, and that a



transcript [4] of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Union Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Union Trust Company of San Francisco for the payment of said sum of \$6,098.20, as taxes, out of the sums deposited and impounded in said Union Trust Company of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said district court, and the said complainant [6] hereby assigns and sets out separately and particularly the following errors, viz.:

**I.**

The Court erred in refusing to deny the application of the city attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the

above-named Union Trust Company of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Union Trust Company of San Francisco, subject to the order of said court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Union Trust Company of San Francisco for the payment of said sum of \$6,098.20, as taxes, out of the sums deposited and impounded in said Union Trust Company of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Union Trust Company [7] of San Francisco, as aforesaid, were moneys in litigation in the possession of said Union Trust Company of San Francisco as receiver.

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and

levied upon certain sums received by said Union Trust Company of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled Court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Union Trust Company of San Francisco. . .

#### VIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Union Trust Company of San Francisco, no moneys were on deposit with said Union Trust Company of San Francisco on the first Monday in March, 1914.

#### IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Union Trust Company of San Francisco, no moneys were on deposit with said Union Trust Company of San Francisco, on [8] the first Monday in March, 1914.



X.

The Court erred in making said order and in directing that the sum of \$6,098.20 be paid out of sums deposited in said Union Trust Company of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Union Trust Company of San Francisco in each of said actions.

XI.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Union Trust Company of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Union Trust Company of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Union Trust Company of San Francisco pursuant to a stipulation by the parties in the above-



entitled action that said deposit should be subject to the condition that any amount so deposited would [9] be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts should be returned to the persons entitled thereto, and were not deposited in said Union Trust Company of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

### XIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Union Trust Company of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1914-1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for said Complainant  
McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with UNION TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.20, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a Corporation, complainant in the above-entitled ac-

tion has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with securities in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300-00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]



Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with UNION TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,098.20, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and



its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,

[Seal]

By S. P. EASTMAN,

Vice-president.

By JOHN E. BEHAN,

Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[Seal]

By JOHN H. ROBERTSON and

FRANK M. HALL,

Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praecipe [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Union Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, order permitting [16] appeal,

and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,

A. CRAWFORD, GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Jan 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I, WALTER B. MALING, Clerk of the District  
Court of the United States, in and for the Northern  
District of California, do hereby certify the fore-  
going seventeen (17) pages, numbered from 1 to 17  
inclusive, to be full, true and correct copies of the  
records and proceedings as enumerated in the  
praecipe for transcript of record, as the same remain

on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled.  
Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original).]**

United States of America,—ss.

The President of the United States, to City and County of San Francisco, a Municipal Corporation, the Tax Collector of said City and County, and Percy V. Long, City Attorney, Attorney for said Tax Collector and for said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the District Court of the United States, for the Northern District of California. [19] Second Division, wherein Spring Valley Water Company, a corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$6,098.20 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Union Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.



WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WILLIAM C. VAN FLEET,  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: Nos. 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "D." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2549. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen

orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled Court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Appellant.

PERCY V. LONG,  
City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547—2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,  
Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to Facts Contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.



**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the

said Agreed Stipulation as to facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

12  
No. 2548

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*See briefs in 2543*  
**United States**

# **Circuit Court of Appeals**

**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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## **Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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**Filed**

JAN 28 1915

**F. D. Monckton,**  
Clerk.

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No. 2548

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos, 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corpo-  
ration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To SPRING VALLEY WATER COMPANY, a Cor-  
poration, and McCUTCHEN, OLNEY and  
WILLARD, its Attorneys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to the  
Union Trust Company of San Francisco; to the Mer-  
cantile National Bank of San Francisco; to the Bank  
of California National Association of San Francisco;  
to the Wells Fargo Nevada Bank of San Francisco:

You, and each of you will please take notice that  
on Monday, the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding  
therein, at the hour of 10 o'clock A. M., or as soon  
thereafter as counsel can be heard, the undersigned  
will apply for an order in the above-entitled court

directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said [1\*] taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney, Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos, 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Order for Payment of Taxes.**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of

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\*Page-number appearing at foot of page of original certified Record.



San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Four Thousand, Six Hundred Twenty-three and 94/100 (\$4,623.94) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled actions in the UNION TRUST COMPANY OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said UNION TRUST COMPANY OF SAN FRANCISCO as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court; which sums escaped assessment for the fiscal year 1913-1914;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Four Thousand, Six Hundred Twenty-three and 94/100 (\$4,623.94) Dollars, as taxes out of the sums deposited in said bank as aforesaid.

Dated December 1st, 1914.

WILLIAM C. VAN FLEET,  
Judge.

[Endorsed: Filed Dec. 1, 1914. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.  
Defendants.

**Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$4,623.94 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with UNION TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.94, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be allowed [4] and

that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$4,623.94 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Union Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Union Trust Company of San Francisco for the payment of said sum of \$4,623.94, as taxes, out of the sums deposited and impounded in said Union Trust Company of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said District Court, and the said complainant hereby assigns and sets out separately and particularly [6] the following errors, viz:

**I.**

The Court erred in refusing to deny the application of the city attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the



above-named Union Trust Company of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$4,623.94 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Union Trust Company of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Union Trust Company of San Francisco for the payment of said sum of \$4,623.94, as taxes, out of the sums deposited and impounded in said Union Trust Company of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Union Trust Company of San Francisco, as aforesaid, were moneys in litigation in the possession of said Union Trust Company of San Francisco as receiver. [7]

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and



levied upon certain sums received by said Union Trust Company of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Union Trust Company of San Francisco as received.

#### VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which had escaped assessment for the fiscal year 1913-1914.

#### IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Union Trust Company of San Francisco, no moneys were on deposit with said Union Trust Company of San Francisco on the first Monday in March, 1913.

#### X.

The Court erred in making said order, because it appears from the undisputed facts of the case that

in action No. 15,569 of the above-entitled actions, referred to in the assessment to said Union Trust Company of San Francisco, no moneys were on deposit [8] with said Union Trust Company of San Francisco on the first Monday in March, 1913.

XI.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Union Trust Company of San Francisco, no moneys were on deposit with said Union Trust Company of San Francisco on the first Monday in March, 1913.

XII.

The Court erred in making said order and in directing that the sum of \$4,623.94 be paid out of sums deposited in said Union Trust Company of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Union Trust Company of San Francisco in each of said actions.

XIII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Union Trust Company of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by

complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

#### XIV.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Union Trust Company of San Francisco [9] in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Union Trust Company of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Union Trust Company of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

#### XV.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Union Trust Company of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1913-1914 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley

Water Company prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

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*In the District Court of the United States, Northern  
District of California—Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et  
al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of  
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$4,623.94



be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with UNION TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.94, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of \$300 00/100 which said bond and sureties thereon shall be



approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city

and county, in the full and just sum of Three Hundred (\$300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$4,623.94 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with UNION TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$4,623.94, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant,

Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorney in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

[Seal]

SPRING VALLEY WATER COMPANY,  
By S. P. EASTMAN,

Vice-President.

By JOHN E. BEHAN,

Secretary.

[Seal]

MASSACHUSETTS BONDING AND INSURANCE COMPANY,  
By JOHN H. ROBERTSON, and  
FRANK M. HALL,

Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

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*In the District Court of the United States, Northern  
District of California—Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praecipe [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$4,623.94 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Union Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, order [16] permitting appeal,

and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain



on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for Plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp Canceled Jan. 5, 1915. J. A. S.] [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Citation [on Appeal (Original).]**

United States of America,—ss.

The President of the United States, to City and County of San Francisco, a Municipal Corporation, the Tax Collector of said City and County, and Percy V. Long, City Attorney, Attorney for said Tax Collector and for said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the District Court of the United States, for the Northern District [19] of California, Second Division, wherein Spring Valley Water Company, a corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$4,623.94 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Union Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2nd day of January, 1915.

WM. C. VAN FLEET,  
United States District Judge. [20]

Service of the within Citation and receipt of a copy is hereby admitted this 2nd day of January, 1915.

PERCY V. LONG.

[Endorsed]: No. 14,735—14,892—15,131—15,569—15,344 and 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "C." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 2548. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547-2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543 etc.]**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions No. 14,735-14,892-15,131-15,569-15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipu-

lation as to Facts is fully set out and contained in the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled Court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.



At a stated term, to wit, the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,  
Appellees.

**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.]**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26 made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW THEREFORE it is hereby stipulated and

agreed by and between the parties hereto that the said Agreed Stipulation as to facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed] : Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

No. 2547

*See books in 2543*  
United States

# Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Monckton,  
Clerk.





**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation, and TAX COL-  
LECTOR of Said City and County,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND AND COUNTY OF SAN FRAN-  
CISCO et al.,

Defendants.

**Notice of Motion [for Order Directing Payment of  
Taxes, etc.].**

To Spring Valley Water Company, a Corporation,  
and McCutchen, Olney and Willard, Its Attor-  
neys:

To the Crocker National Bank of San Francisco;  
to the First National Bank of San Francisco; to the  
Anglo & London Paris Bank of San Francisco; to  
the Union Trust Company of San Francisco; to the  
Mercantile National Bank of San Francisco; to the  
Bank of California National Association of San  
Francisco; to the Wells Fargo Nevada Bank of San  
Francisco:

You, and each of you will please take notice that  
on Monday the 30th day of November, 1914, in the  
above-entitled court and division, before the Hon.  
WILLIAM C. VAN FLEET, Judge presiding there-

in, at the hour of 10 o'clock A. M. or as soon thereafter as counsel can be heard, the undersigned will apply for an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday, the 30th day [1\*] of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney, Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—  
15,326.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND AND COUNTY OF SAN FRAN-  
CISCO et al.,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

**(Order for Payment of Taxes.)**

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco. IT IS HEREBY ORDERED that the sum of Six Thousand, Seven Hundred Sixty and 04/100 (\$6,760.04) Dollars be paid out of sums deposited subject to order of this court in the above-entitled

\*TRUST  
actions in the MERCANTILE NATIONAL  
COMPANY

~~BANK~~ OF SAN FRANCISCO, to said Tax Collector being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon cer-

\*Trust Company  
tain sums received by said Mercantile ~~National Bank~~  
of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Six Thousand, Seven Hundred Sixty and 04/100 (\$6,760.04) Dollars, as taxes out of [3] the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,  
Judge.

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\*Corrected pursuant to Order signed and filed December 30, 1914, nunc pro tunc December 1, 1914. J. A. Schaertzer, Deputy Clerk.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [4]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15, 131—15,569—15,344—  
15,326.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CITY AND AND COUNTY OF SAN FRAN-  
CISCO, etc., et al.,

Defendants.

**Order Nunc Pro Tunc for Order Directing Payment  
Taxes on Impounded Money by Mercantile Trust  
Company of San Francisco.**

WHEREAS, on the first day of December, 1914,  
this Court made its order directing payment by the  
Mercantile National Bank to E. F. Bryant, Tax Col-  
lector of the City and County of San Francisco, of  
the sum of Six Thousand, Seven Hundred Sixty and  
04/100 (\$6,760.04) Dollars, as taxes for the fiscal  
year 1913-14 on the impounded rate moneys in the  
above-entitled actions; and,

WHEREAS, it appears that no moneys were de-  
posited with the Mercantile National Bank in the  
above-entitled actions and that moneys were de-  
posited with the Mercantile Trust Company of San  
Francisco in the above-entitled actions; and,

WHEREAS, it now appears that the assessment of the moneys so taxed had been originally erroneously made against said Mercantile National Bank instead of against the Mercantile Trust Company of San Francisco, as receiver and depository, where said moneys were actually on deposit; and,

WHEREAS, the said Mercantile Trust Company of San Francisco paid said taxes in compliance with the said order directed to the Mercantile National Bank; and [5]

WHEREAS, prior to receipt of said taxes by the said Tax Collector said erroneous assessment was regularly corrected on the books of the Assessor of the City and County of San Francisco, and said taxes now appear thereon to have been duly paid by the Mercantile Trust Company of San Francisco, receiver as aforesaid; and

It appearing to the Court, that said order of December 1st, 1914, should be corrected to conform with said payment, in order that the same shall appear to have been made upon authorization of this Court;

NOW THEREFORE, IT IS HEREBY ORDERED that the order of this court made the first day of December, 1914, directing the payment by the Mercantile National Bank to Edward F. Bryant, Tax Collector of the City and County of San Francisco, of the sum of Six Thousand, Seven Hundred Sixty and 04/100 (\$6,760.04) Dollars, taxes as aforesaid, be corrected on its face so as to order said payment to be made by the Mercantile Trust Company of San Francisco as receiver and depository of said impounded moneys; and the clerk of the court is hereby



authorized and directed to make such correction *nunc pro tunc*; and it is further ordered that the action of the Mercantile Trust Company of San Francisco, in paying said taxes, be and it is hereby ratified, confirmed and approved.

Dated December 30, 1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 30, 1914, *nunc pro tunc* Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [6]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

### **Petition for Appeal.**

SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$6,760.04 be paid to the Tax Collector of the City and County of San Francisco,

State of California, out of certain sums deposited with MERCANTILE TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,760.04, as taxes, out of the sums deposited and impounded in said bank as aforesaid; comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be allowed, [7] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for said Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

8            *Spring Valley Water Company vs.*

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [8]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND AND COUNTY OF SAN FRAN-  
CISCO et al.,

Defendants.

**Assignment of Errors.**

Now comes SPRING VALLEY WATER COM-  
PANY a Corporation, complainant in the above-  
entitled actions, by its undersigned solicitors, and  
says that in the record, proceedings and order made  
and entered in these cases on the first day of Decem-  
ber, 1914, wherein and whereby it was ordered that  
the sum of \$6,760.04 be paid to the Tax Collector of  
the City and County of San Francisco, State of Cali-  
fornia, out of certain sums deposited with Mercantile  
Trust Company of San Francisco subject to the  
orders of the above-entitled court in the above-en-  
titled actions, and wherein and whereby it was fur-  
ther ordered that John A. Schaertzer, Special Master  
in Chancery in said actions, draw his check upon said  
Mercantile Trust Company of San Francisco for the  
payment of said sum of \$6,760.04, as taxes, out of the

sums deposited and impounded in said Mercantile Trust Company of San Francisco as aforesaid, there is manifest error, in that the said complainant has been denied its just rights by the order entered by said district court, and the said complainant hereby assigns and sets out [9] separately and particularly the following errors, viz.:

I.

The Court erred in refusing to deny the application of the city attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Mercantile Trust Company of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$6,760.04 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Mercantile Trust Company of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Mercantile Trust Company of San Francisco for the payment of said sum of \$6,760.04, as taxes, out of the sums deposited and impounded in said Mercantile Trust Company of San Francisco, as aforesaid.

III.

The Court erred in making said order and in hold-



ing and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

#### IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Mercantile Trust Company of San Francisco, as aforesaid, were moneys in litigation in the possession of said Mercantile Trust Company of San Francisco as receiver. [10]

#### V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Mercantile Trust Company of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled Court.

#### VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

#### VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Mercantile Trust Company of San Francisco as receiver.

#### VIII.

The Court erred in making said order, because it appears from the undisputed facts of the case that



said assessment was originally made to Mercantile National Bank and that said assessment was changed by the assessor on the assessment-rolls subsequent to the 28th day of November, 1914, without authority of law, so that said assessment would show said moneys to be assessed to Mercantile Trust Company of San Francisco.

IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in none of the above-entitled actions have any moneys been deposited with Mercantile National Bank of San Francisco. [11]

X.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Mercantile Trust Company of San Francisco, no moneys were on deposit with said Mercantile Trust Company of San Francisco on the first Monday in March, 1914.

XI.

The Court erred in making said order and in directing that the sum of \$6,760.04 be paid out of sums deposited in said Mercantile Trust Company of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Mercantile Trust Company of San Francisco in each of said actions.

XII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out

of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Mercantile Trust Company of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

### XIII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Mercantile Trust Company of San Francisco in action No. 15,344 of the above-entitled actions, because it [12] appears from the undisputed facts of the case that said moneys were deposited by complainant with said Mercantile Trust Company of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Mercantile Trust Company of San Francisco pursuant to any order of the Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

XIV.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Mercantile Trust Company of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1914—1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [13]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, et al.,  
Defendants.

**Order Permitting an Appeal and Fixing Amount of Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$6,760.04 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with MERCANTILE TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,760.04, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [14] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.



IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this Court, in the said United States District Court in the sum of \$300.-00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,  
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE



COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (\$300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a Municipal Corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [16]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$6,760.04 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with MERCANTILE TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and

wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$6,760.04, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a corporation, has caused [17] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY,

[Seal] By S. P. EASTMAN,

Vice-President.

By JOHN E. BEHAN,

Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[Seal] By JOHN H. ROBERTSON and

FRANK M. HALL,

Attorneys-in-Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Praeipce [for Transcript of Record].**

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of \$6,760.04 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Mercantile National Bank of San Francisco, subject to the orders

of the above-entitled Court in the above entitled actions.

(3) The order of Court correcting the above-mentioned order so as to refer to Mercantile Trust Company of San Francisco instead of to Mercantile National Bank of San Francisco. [19]

(4) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,  
A. CRAWFORD GREENE,  
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,  
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing twenty (20) pages, numbered from 1 to 20 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$11.60; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled  
Jan. 5, 1915. J. A. S.] [21]



*In the District Court of the United States, Northern  
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, et  
al.,

Defendants.

**Citation [on Appeal (Original)].**

United States of America.—ss.

The President of the United States, to City and  
County of San Francisco, a Municipal Corpora-  
tion, the Tax Collector of said City and County,  
and Percy V. Long, City Attorney, Attorney  
for said Tax Collector and for said City and  
County; Greeting:

YOU ARE HEREBY CITED and admonished to  
be and appear at a United States Circuit Court of  
Appeals, for the Ninth Circuit, to be holden at the  
City and County of San Francisco, State of Califor-  
nia, on the 29th day of January, 1915, being within  
thirty days from the date hereof, pursuant to an  
order allowing an appeal filed in the clerk's office of  
the District Court of the United States, for the North-  
ern District of California, [22] Second Division,  
wherein Spring Valley Water Company, a corpora-  
tion, complainant in said actions, is appellant, and  
you are appellees, to show cause, if any there be, why

the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$6,760.04 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Mercantile Trust Company of San Francisco, subject to the orders of the above-entitled Court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable William C. Van Fleet, United States District Judge, for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,

United States District Judge. [23]

Service of the within citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

[Endorsed]: No. 14,735—14,892—15,131—15,569 15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco, et al., Defendants. Citation. "B." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

PERCY V. LONG

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[Endorsed]: No. 2547. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal

Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

Nos. 2547—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Respondents.

**Stipulation [Re Agreed Stipulation as to Facts in  
Spring Valley Water Company vs. City and  
County of San Francisco et al., No. 2543, etc.].**

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26 made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories,

subject to the orders of the aforesaid district court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

Whereas, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said district court, the said Agreed Stipulation as to Facts is fully set out and contained in the transcript of the record in said district court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD J. McCUTCHEN,

A. CRAWFORD GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547-2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

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At a stated term, to wit, the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY, Appellees.



**Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.**

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

Nos. 2543—2547—2548—2549—2550—2551—2552—  
2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Cor-  
poration,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,  
Respondents.

**Stipulation [That Agreed Stipulation of Facts  
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to Facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said district court, the said Agreed Stipulation as to Facts is fully set out and

contained in the transcript of the record in said district court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to Facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, and 2559, in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to Facts contains all the material facts upon which the said district court made its said orders as aforesaid, and that said Agreed Stipulation as to Facts contains all the material facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monekton, Clerk.





No. 2561

IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit

CHU TAI NGAN,

*Appellant,*

VS.

SAMUEL W. BACKUS, Commissioner of  
Immigration at the Port of San Francisco,  
*Appellee.*

**BRIEF FOR APPELLANT.**

CATLIN, CATLIN & FRIEDMAN,  
*Attorneys for Appellant.*

*Filed this.....day of May, 1915.*

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk

**Filed**

MAY 14 1915

F. D. Monckton.



No. 2561

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

CHU TAI NGAN,

*Appellant,*

vs.

SAMUEL W. BACKUS, Commissioner of  
Immigration at the Port of San Francisco,

*Appellee.*

## BRIEF FOR APPELLANT.

### Statement.

This is an appeal from an order sustaining a demurrer to and denying a petition for a writ of habeas corpus in the District Court.

The appellant is a Chinese woman, who was admitted to the United States June 17, 1910, as the wife of a citizen of the United States. On November 20, 1912, she was taken into custody in San Francisco, by immigration officers and after certain proceedings held under the provisions of Sec. 3 of Act of February 20, 1907 (34 Stat. 898, 899, C 1134), her case was submitted to the Secretary of Labor

upon a record, a full copy of which is attached to the petition for a writ of habeas corpus and appears in the Transcript of the Record at pages 11 to 49 inclusive. After a consideration of this record and on December 30, 1912, the Secretary issued a warrant of deportation containing a finding or judgment,

“that the said alien is a prostitute and has been found an inmate of a house of prostitution and practicing prostitution subsequent to her entry into the United States.”

The warrant directs her deportation to China (Trans. of Record, p. 12).

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### **Specification of Error.**

We rely on one point as set forth in the petition for a writ of habeas corpus as unfairness and abuse of discretion in the hearing before the Department of Commerce and Labor, to wit:

That the warrant of deportation and the finding or judgment contained therein was not based upon or sustained by any material evidence (subdivision 3, paragraph III, Petition for a Writ of Habeas Corpus, Trans. of Record, pp. 8, 9).

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### **Argument.**

#### **LACK OF EVIDENCE.**

The petition for a writ of habeas corpus alleges that all of the evidence submitted to the Secretary

is contained in the record attached as an exhibit to said petition (Trans. of Record, pp. 8 and 9). There being no denial of this, the warrant of deportation must be based upon the matter contained in that record.

The record contains nothing showing the manner or place of the appellant's arrest.

The evidence produced by the Government consists of the statements of this appellant (Trans. of Record, p. 18) and of one Kwan So (Trans. of Record, p. 23) taken on Angel Island November 21, 1912, and the statement of A. D. Layne taken by Inspector Robinson at the Police Station in San Francisco, November 27, 1912 (Trans. of Record, p. 27). After the appearance of counsel in the case (Trans. of Record, p. 29), a mass of evidence was submitted on behalf of the detained and is included in the exhibit of the immigration record, appearing in the Transcript of Record at page 11 to page 49, inclusive.

There is no evidence in the statement of the appellant (Trans. of Record, p. 18) even tending to support the finding and judgment of the Secretary. There is no reference at all to this petitioner in the statement of Kwan So (Trans. of Record, p. 23). It cannot be claimed that the application for and the warrant of arrest is evidence. The warrant of deportation is therefore based solely upon the signed statement of A. D. Layne (Trans. of Record, p. 27), and if that statement does not contain evidence sufficient to sustain the finding that the peti-



tioner "is a prostitute and was found an inmate of a house of prostitution and practicing prostitution subsequent to her entry into the United States", then the warrant of deportation is without authority and it was the duty of the lower Court to issue the writ of habeas corpus.

There has been some diversity of opinion in the various circuits as to the extent to which a federal Court should go in reviewing and considering the evidence upon which a warrant of deportation is based in an immigration proceeding. The Courts have not declined in any case to take jurisdiction where *no evidence at all* is produced to sustain the warrant.

In *Ex parte Petkos*, 212 Fed. 275, the District Court of Massachusetts held that it was unfair and injurious to the petitioner where the immigration authorities acted upon their own mistaken assumption that they knew about a matter of which *there was no evidence*. This is unquestionably the law in all circuits.

As to the *sufficiency* of the evidence and the *extent* to which the Court may go in analyzing the same in habeas corpus proceedings, the Supreme Court in two cases, has placed a most liberal construction on the law in favor of the Court's right to fully consider the evidence as to its *sufficiency*.

Lewis v. Frick, 233 U. S. 291;

Zakonaite v. Wolf, 226 U. S. 272.

In the first case, *Lewis v. Frick* (*supra*), the matter came before the Supreme Court on a petition

for a writ of certiorari from the Circuit Court of Appeals, of the Sixth Circuit. It had been taken to the appellate Court by the Government upon an appeal from an order of the Circuit Court of Michigan, S. D., granting a writ of habeas corpus. The order of the Circuit Court had been reversed. The two cases are reported,

Lewis v. Frick, 189 Fed. 146;

Frick v. Lewis, 195 Fed. 693.

There is no difference of opinion between the Courts in these two cases as to their power and duty to review an administrative proceeding under the immigration law where there was not sufficient evidence to sustain the finding and judgment of the immigration authorities. In Lewis' particular case, the Circuit Court held that the evidence *did not sustain* the findings. The Circuit Court of Appeals did not agree with the lower Court. Nor did the Supreme Court. The higher Courts held that the evidence *did* sustain the findings.

Lewis was a Russian who had gone into Canada and who, on his return, had brought with him a woman whom he claimed as his wife. He claimed to have married her in Warsaw, a number of years before. The immigration officers claimed that his story was a fabrication and that he had brought the woman to the United States for immoral purposes. If this finding had been final and conclusive that would have been the end of the matter. But the evidence was discussed and weighed in three Courts with the result that the finding of the immi-

gration officers was upheld, not upon a question of jurisdiction, but upon the question of the sufficiency of the evidence.

In the Supreme Court in *Lewis v. Frick*, 233 U. S. 291 (*supra*), the reversing decision of the Circuit Court of Appeals is attacked upon several grounds.

Referring to the point as to the sufficiency of the evidence, the Court says (*Lewis v. Frick, supra*, 233 U. S. 291-297):

“The next question is whether there was *sufficient* evidence to *fairly* sustain the finding of the Secretary of Commerce and Labor to the effect that petitioner did on November 17, 1900 import and bring into the United States, a woman for an immoral purpose.”

The rule could not be more clearly stated that the Court may take the issue of fact and examine and determine it upon the weight and sufficiency of the evidence considered by the Secretary.

Lewis, the petitioner contended that the woman was his wife. The respondent contended that his story was a fabrication used to conceal the fact that she was a prostitute.

Of the respondent's view the Supreme Court says:

“There is much evidence to support this view.”

*Lewis v. Frick, supra*, 233 U. S. 291-298.

The Court examines and analyzes the evidence fully, quoting in part, the testimony of the petitioner, Lewis (*Lewis v. Frick, supra*, 233 U. S. 291, 298, 299, 300).

Concerning the evidence and the Secretary's conclusion therefrom, the Court says:

“enough appears to show that he was fully justified in concluding as a matter of fact that the whole story of the marriage in Warsaw was a fabrication.”

Lewis v. Frick, 233 U. S. 291, 300.

In conclusion the Court says:

“That being so and there being no contention that the hearing was not fairly conducted the finding of the Secretary upon the question of fact is binding upon the Courts.”

Lewis v. Frick, *supra*, 233 U. S. 291, 300.

In the second case cited, Zakonaite v. Wolf (*supra*), the petitioner was an alien woman, and, as this appellant, was ordered deported under the authority of Sec. 3 of the Act of February 20, 1907.

In that case, the Supreme Court said:

“In her behalf, it was contended in the Court below and is here contended that there was *no evidence before the Secretary of Commerce and Labor sufficient* to warrant the findings of fact upon which the order of deportation was based.”

Zakonaite v. Wolf, *supra*, p. 274.

In reference to this contention, the Court further said:

“As to the first point, an examination of the evidence upon which the order of deportation was based, convinces us that it was *adequate* to support the Secretary's conclusion of fact. That being so, and the appellant having had



a fair hearing, the findings are not subject to review of the Courts.”

Zakonaite v. Wolf, *supra*, pp. 274, 275.

While in both cases the judgment of the immigration authorities was sustained, it is nevertheless clearly and definitely settled that the Court may and must examine the evidence and determine, not only whether or not there is *any* evidence, but whether or not the evidence produced by the authorities does in reality and in logic sustain the finding and judgment of deportation.

This being so, the question which the Court must consider in the case at bar, is whether or not the statement of A. D. Layne is *sufficient* to sustain the finding and judgment of the Secretary that appellant has been found an inmate of a house of prostitution or practicing prostitution subsequent to her entry into the United States.

That the lower Court was not satisfied with the sufficiency of Layne's affidavit is shown by the opinion and order sustaining the demurrer.

“The hearing herein was not unfair. The only evidence against the petitioner tending at all to show that she was a prostitute is the affidavit of Arthur D. Layne. The evidence against petitioner contained therein is very slight, but I cannot say that it contains no evidence upon which the Secretary of Labor could base his finding. The demurrer to the petition will therefore be sustained and the application for a writ of habeas corpus denied.”

Trans. of Record, p. 53.



In this we say the Court erred.

There must not only be some evidence, but the evidence, whatever it may be, must be sufficient to sustain the finding and judgment of the Secretary. That is clearly the attitude of the Supreme Court in *Lewis v. Frick*, 233 U. S. 291 (*supra*). On no other construction of the law, could or would the Supreme Court in that case have taken up and discussed the evidence produced in the immigration proceeding. If the Court was not permitted by law to concern itself with the *weight*, *sufficiency* and *value* of the evidence, upon what theory did the Court in that case discuss the statement of the Russian, Lewis, concerning his alleged marriage to his woman companion? The fact is that the Court did weigh the evidence and found it to be as the immigration authorities had held—evidence that the Russian had brought the woman in for immoral purposes.

In the case at bar, if we ignore the mass of evidence submitted by the petitioner showing that the police officer, Layne, is mistaken as to the identity of this woman, and if we view his statement in the worst possible light toward this appellant, it can only be taken as evidence that Layne at one time arrested the petitioner and charged her with being an inmate of a house of prostitution.

We call the Court's attention particularly to this statement or affidavit (Trans. of Record, p. 27).

It is ambiguous and sheds no light whatever on the character or life of the woman in question.

He states first that he is a police officer of San Francisco, detailed in the Chinese quarters, and that certain premises, located over a store on Grant Avenue, had the general reputation of being a house of prostitution at the time the statement was made, November 27, 1912, and on March 22, 1912. He then states that certain Chinese highbinder societies were at war, presumably in March, 1912; that he received information that these societies were holding a certain Chinese woman in the premises over the store on Grant Avenue; that he visited the place and found a Chinese woman who gave the name of Di Ung; that he arrested her and *charged* her with being an inmate of a house of prostitution; that she subsequently forfeited \$50.00 rather than to be arrested by the immigration officers; and that he saw her with Inspector Robinson on November 20, 1912, at which time she gave the name of Gee Dai, alias Chew Tai Ngan.

In his statement, Layne does not go so far as to say that the woman he arrested was a prostitute, or ever engaged in the practice of prostitution. He merely says he took her away from some warring Chinese societies and placed a charge against her. In fact, she may have been a hostage, or she may have been abducted as a measure of hostility. Layne states that she was *held* in the premises by the warring clans. It is mere guesswork to speculate as to the reasons *why* she was so held. The immigration authorities may not assume to know about a matter of which there is no evidence.

Ex parte Petkos (supra).

As to the identification of this appellant, it does not appear that the appellant was taken before Layne or that her photograph was exhibited to him. It does not even appear that the woman who was with Robinson and gave the name of Gee Dai, alias Chew Tai Ngan, is in fact this appellant. This appellant when she was examined at Angel Island, November 21, 1912, gave the following answer to the following:

“Q. What is your name?

A. Jee Dai Ngan.

Q. Any other names?

A. That is the only name I have.”

The application for and warrant of arrest and the warrant of deportation name the appellant as Chu Tai Ngan (Trans. of Record, pp. 17 and 12). At the best, the situation is confusing, and the immigration officers made no endeavor to clear the matter by further evidence. There is nothing in the evidence submitted by the appellant by way of defense (Trans. of Record, pp. 31 to 49 inclusive), which tends to support the Secretary's finding. If it had any value, it merely supported the appellant's contention before the Department of Labor that she is not the Di Ung who was arrested by Layne.

The fact that Layne was a police officer adds nothing to the value of his affidavit. The fact that he was in charge of the police system in the San Francisco Chinese quarters might raise the presumption that he knew more concerning the denizens of that district than did others. If this be so,

it reduces the value of his testimony upon the legal theory so well expressed in the maxims *expressio unius est exclusio alterius* and *expressum facit cessare tacitum*. In other words, the immigration authorities went to him for proof that this appellant was a prostitute. In his affidavit he told them all that he could, and the facts therein set forth are to the exclusion of all others and to the exclusion of all implications. If he knew that she was a prostitute he would have said so; if he had believed it, he would have expressed his opinion. The presumption is that he neither knew nor believed the woman to be a prostitute.

“If there is no evidence that an alien immigrant is within one of the excluded classes, the immigration authorities have no power to exclude him, and order for his deportation is a nullity and he is entitled to discharge from detention thereunder on a writ of habeas corpus.”

U. S. ex rel. Klein v. Williams, 189 Fed. 915.

The evidence in this case on which the order of deportation was based, was carefully examined and fully considered as to its adequacy and sufficiency by the Court.

In the opinion Judge Holt of the District Court S. D. New York, says:

“In my opinion there is no evidence in this case that either of these aliens is within any of the excluded classes.”

U. S. ex rel. Klein v. Williams, *supra*, p. 918.

The Courts may on habeas corpus review the decision of the Secretary of Labor in an immigration case unless it was based on sufficient evidence and the hearing was fair.

U. S. v. Chin Len, 187 Fed. 544;

U. S. ex rel. Geigow v. Uhl, 215 Fed. 573-575.

In the last case, the Circuit Court of Appeals of the Second Circuit says:

“Congress has placed the determination of these questions in the hands of trained officials and their conclusions upon *disputed questions* of fact are final and conclusive. It is only in the very rare instance that a finding is without *proof* to support it that the Courts may interfere.”

It is our claim that the case at bar is one of the rare instances where there is *no proof* to support the Secretary's finding against this appellant. We do not dispute the veracity of Layne. We assert that his statement is not evidence or proof that this appellant ever practiced prostitution or was an inmate of a house of prostitution.

The doctrines announced in these few last mentioned cases has been reasserted with much more force and breadth by the Supreme Court in the cases cited (Lewis v. Frick, 233 U. S. 291, *supra*; and Zakonaite v. Wolf, *supra*), and any doctrine to the contrary that may appear in any other case reported is erroneous and must fall.

We respectfully represent that the order of the District Court sustaining the demurrer to and dis-



charging the petition for a writ of habeas corpus be reversed and that the writ of habeas corpus issue as prayed for.

Dated, San Francisco,  
May 12, 1915.

CATLIN, CATLIN & FRIEDMAN,  
*Attorneys for Appellant.*

No. 2561.

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IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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CHU TAI NGAN,

*Appellant,*

VS.

SAMUEL W. BACKUS, Commissioner  
of Immigration at the Port of San Francisco,

*Appellee.*

---

**BRIEF OF APPELLEE**

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JOHN W. PRESTON,  
United States Attorney,

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Assistant United States Attorney,  
Attorneys for Appellee.

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*Filed this.....day of May, A. D. 1915.*

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

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No. 2561.

IN THE

# UNITED STATES CIRCUIT OF APPEALS

FOR THE NINTH CIRCUIT.

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CHU TAI NGAN,

*Appellant,*

vs.

SAMUEL W. BACKUS, Commissioner  
of Immigration at the Port of San Fran-  
cisco,

*Appellee.*

---

## STATEMENT OF FACTS

The facts as set forth by the immigration record attached to the petition are that the petitioner Chu Tai Ngan came to the United States in June, 1910, on the steamship "Nippon Maru" with her husband, a native-born citizen of the United States. Two months later the husband left her and has not lived with her since. On November 21, 1912, this alien was taken into custody in a raid on No. 20 St. Louis alley over 921 Grant avenue, along with other prostitutes. Petitioner was given a preliminary hearing on the 21st of November and on the 23rd an application for a warrant of arrest was sent to the Secretary of Labor,

which warrant of arrest finally arrived on the 25th of November, upon which the alien was duly arraigned and advised of her rights. About two days later an affidavit of Sergeant Layne, who was then a member of the Chinese Squad of the city police force, was duly made and entered in the record. The final warrant of deportation was issued on December 30th.

The matter then came up in this Court on January 23, 1913, on a petition for a writ of *habeas corpus* and Judge Dietrich, sitting in the District Court, denied the writ and remanded the woman to custody. An appeal was then taken to the Supreme Court of the United States. Perfection of the appeal in the Supreme Court was deferred until January, 1914, at which time the appeal was dismissed, the woman was again surrendered to the immigration officials and a new petition for a writ of *habeas corpus* was sued out on March 20, 1914, to which the government on behalf of respondent, Samuel W. Backus, Commissioner of Immigration at Angel Island, Cal., interposed its demurrer. Upon submitting the matter, Judge Dooling, on June 9, 1914, made the following finding and decision:

"The hearing herein was not unfair. The only evidence against the petitioner tending at all to show that she was a prostitute is the affidavit of Arthur D. Layne. The evidence against petitioner contained therein is very slight, but I cannot say that it contains no evidence upon which the Secretary of Labor could base his finding. The demurrer to the petition will therefore



be sustained, and the application for a writ of *habeas corpus* denied."

## WAS THERE SOME EVIDENCE IN THE RECORD?

Counsel for appellant state that they relied upon only one point of error and that is that the District Court erred in not ruling that the Secretary of Labor had no evidence upon which to base his finding, or in other words, "That the warrant of deportation and the finding or judgment contained therein was not based upon or sustained by any material evidence."

In the application for a warrant of arrest dated November 23, 1912, which is in the form of an affidavit (Trans., 13, 14), there is the following allegation of facts:

"This alien arrived ex 'Nippon Maru,' June 17, 1910. She was found in a raid conducted by this office at 20 St. Louis alley, being over 921 Grant. ave. *This is the same house which was raided before in which two girls were found practicing prostitution and ordered deported, their names being Yuk Ping, Dept. #52143/15 and Chan Kam, Dept. #53210/38-C. This is also a well known house of prostitution by police records. Chu Tai Ngan has every appearance of being a Chinese prostitute and was arrested by S. F. police some three months ago in a raid by them and paid a fine of \$50, as practicing prostitution.*"

Not only does the record show throughout that the woman was arrested with prostitutes in an immoral

house, but there is the further testimony of Sergeant Layne, who, in an affidavit (Trans., 27) states that he identified the woman as the same person he arrested for being an inmate of an immoral house on March 22nd, 1912, and further states that he knows that the place of her last arrest, 921 Grant avenue, to have the general reputation of being a house of prostitution and also that the woman, when arrested, forfeited bail at the time of her trial. He further states that her attorney, Benj. J. Block, informed the Court at the time of her non-appearance that she forfeited her bail because she feared arrest by the immigration officials. This we contend is at least *some* evidence. At any rate, the Secretary of Labor had jurisdiction of the case and in his judgment considered the facts ample to rule for deportation. Shall this ruling be overturned by the District Court where there is at least *some* evidence? Out of five witnesses the Secretary of Labor may not believe four and give credence to one. That is entirely within his prerogative.

The question of the District Court reopening the merits and facts of the case where the Secretary of Labor has rules and where the proceedings were regular was emphatically commented upon in the case of *Ex parte Chin Hen Lock*, 174 Fed. 282, 286-7, in which the Court said:

“It is not the province of the district judge *to try the facts* upon which a Chinese immigrant claims the right to enter the United States. Con-

gress has provided that all these facts are to be heard by the appropriate immigration officers.

\* \* \* It has been held by the Supreme Court that a hearing by that tribunal is due process of law. *United States v. Ju Toy*, 198 U. S. 253.

\* \* \* Some of the judges of the Circuit Court of Appeals have stated that this decision has been somewhat modified by the *Chin You* case, 208 U. S. 8. \* \* \*

I do not so understand it. The *Chin You* case simply holds that where an applicant claiming to be an American citizen by birth had no trial, or the hearing before the inspector gave the applicant no 'chance to establish his right' in the mode provided by the statutes, or his hearing was not conducted 'in good faith', however summary, it is the duty of the courts to take jurisdiction; otherwise not.

\* \* \* The opinion in this case is entirely consistent with that in the *Ju Toy* case. \* \* \*

Applying the principle that the district judges are not to interfere with the conduct of the immigration officer or the Honorable Secretary of Commerce and Labor in the performance of their statutory duty, where they have given the applicant a fair hearing, *however they may have weighed and decided the facts*, if they have acted in good faith, the judges should keep their hands off."

In *In re Tang Tung*, 168 Fed. 488, 496, there is a statement in the opinion on the question of the District Court weighing the evidence as follows:

"That, after examining the record and finding that a *bona fide* hearing had been granted, 'under such circumstances we do not understand \* \* \* that any court is authorized to review the action of the Department of Commerce and Labor in the matter of admitting *or weighing evi-*

*dence, or to consider whether the conclusions drawn by its officials were right or wrong.' "*

The case of *Ex parte Lee Kow*, 161 Fed. 592, is in accord with the cases just cited:

"This court cannot grant a writ and in effect reverse and set aside the decision of the inspector and department on the ground it may think there was *sufficient evidence to warrant a decision the other way, or that there was a preponderance of evidence in favor of the petitioner*. See cases cited. When a question of fact is presented for the decision of these *quasi-judicial* officers, and that question is honestly passed upon, it is final and conclusive on the courts if a full opportunity to be heard was given."

The case of *White vs. Gregory*, 213 Fed. 768, Circuit Court of Appeals, Ninth Circuit, Judge Morrow ruled that the courts would not weigh or inquire into the sufficiency of the evidence.

"In the present case the executive officers found that the aliens were persons likely to become a public charge. This is a ground of exclusion provided by law. In reaching this conclusion the officers gave the aliens the hearing provided by the statute. *This is as far as the court can go in examining such proceedings. It will not inquire into the sufficiency of probative facts, or consider the reasons for the conclusion reached by the officers.*"

The fact that the alien denied that she was engaged in any immoral practices (Trans., 19) or that she ever went to this particular house to practice prostitution

may be evidence by her very contradictions, as was held in the case of *Quock Ting vs. United States*, 140 U. S. 417, where it was decided that the immigration board is not bound in any way to believe the statements of the alien.

“He may be contradicted by the facts he states as completely as by direct adverse testimony.  
\* \* \* His manner, too, of testifying may give rise to doubts of his sincerity and create the impression that he is giving wrong coloring to material facts. All these things may properly be considered in determining the weight which should be given to his statements, although there be no adverse verbal testimony adduced.”

Counsel for alien contend that the case of *Frick vs. Lewis*, 233 U. S. 291, gives the Court the power to review the evidence submitted to the Secretary of Labor. It is believed that the Supreme Court did not intend to convey such an impression. The Court held in that case that the acquittal of the alien upon a trial before a jury in a court of law was not binding upon the Secretary of Labor in determining the facts under a deportation proceeding. Justice Pitney said:

“The court also held that the acquittal of Lewis was not *res adjudicata* of the present proceeding, and that since there was evidence tending to support the findings of the Secretary of Commerce and Labor respecting the bringing in of the woman for the purpose of prostitution, that finding was conclusive.”

It appears that the Supreme Court's sole inquiry



in that case was whether or not there was any justification for the Secretary's findings on the evidence.

"Were there doubt whether the testimony itself, without the documentary evidence, would support the action of the Secretary of Commerce and Labor, we should be inclined to say that a court ought not set aside that action without at least requiring the production of the exhibits that were presented to the Secretary. *But, without regard to them, enough appears to show that he was fully justified in concluding as a matter of fact that the whole story of the marriage in Warsaw was a fabrication, and that in truth Lewis went from Detroit to Windsor upon information from which he inferred that the woman was an alien and a prostitute, willing to accompany him to Detroit for an immoral purpose, and that he brought her to Detroit for that purpose.*

"This being so, and there being no contention that the hearing was not fairly conducted, *the finding of the Secretary upon the question of fact is binding upon the courts.* *Low Wah Suey v. Backus*, 225 U. S. 460, 468, 56 L. ed. 1165, 1167, 32 Sup. Ct. Rep. 734; *Zakonaite v. Wolf*, 226 U. S. 272, 275, 57 L. ed. 218, 220, 33 Sup. Ct. Rep. 31."

It is indeed difficult to understand in what way the United States Supreme Court in the cases of *Lewis vs. Frick*, *supra*, and *Zakonaite vs. Wolf*, 226 U. S. 272, have changed its ruling from the doctrine pronounced in the case of *Chin Yow vs. United States*, 208 U. S. 8, in which Justice Holmes held that an inquiry into the facts and the evidence was not open until it was first established that there had been an irregular or unfair hearing.

"If the petitioner was not *denied a fair opportunity to produce the evidence* that he desired, or a fair, though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the District Court. If it has any jurisdiction at all, *in must not be supposed that the mere allegation of the facts opens the merits of the case* whether those facts are proved or not. \* \* \* But unless and until it is proved to the satisfaction of the judge that a hearing properly so called, was denied, the merits of the case are not opened and we may add, *the denial of a hearing cannot be established by proving the decision was wrong.*"

In the case of *Low Wah Suey vs. Backus*, 225 U. S. 468, Justice Day ruled that the decisions of the executive officials of the Immigration Department on the facts and evidence were sound, unless it was shown that their action was such as to prevent a fair investigation.

"A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the proceedings were *manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation*, or that there was a manifest abuse of the discretion committed to them by the statute. *In other cases the order of the executive officers within the authority of the statute is final.* U. S. v. *Ju Toy*, 198 U. S. 253, 49 L. ed. 1040, 25 Sup. Ct. Rep. 644; *Chin You v. U. S.*, 208 U. S. 8, 52 L. ed. 369, 28 Sup. Ct. Rep. 201; *Tang Tun*

v. *Edsel*, 223 U. S. 673, *ante* 606, 32 Sup. Ct. Rep. 359."

In this appeal it is not claimed that there was any irregularity or unfairness in the proceedings in conducting the hearings according to the immigration rules and regulations. The only point relied upon by counsel for the appellant is that the evidence was insufficient. In view of the many decisions which hold that the courts will not question the amount or sufficiency of the evidence until it is shown that a proper or fair hearing before the Immigration Bureau was denied, it is respectfully requested that the order of the District Court in denying the petition for the writ of *habeas corpus* be sustained.

Respectfully submitted,

JOHN W. PRESTON,

United States Attorney,

WALTER E. HETTMAN,

Assistant United States Attorney,

Attorneys for Appellee.

No. 2561

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

CHU TAI NGAN,

*Appellant,*

VS.

UNITED STATES OF AMERICA,

*Appellee.*

APPELLANT'S PETITION FOR A REHEARING.

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*Attorneys for Appellant and Petitioner.*

*Filed this*.....*day of November, 1915.*

*FRANK D. MONCKTON, Clerk.*

*By*.....*Deputy Clerk.*





No. 2561

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

CHU TAI NGAN,

*Appellant,*

VS.

UNITED STATES OF AMERICA,

*Appellee.*

## APPELLANT'S PETITION FOR A REHEARING.

*To the Honorable William B. Gilbert, Presiding  
Judge, and the Associate Judges of the United  
States Circuit Court of Appeals, for the Ninth  
Circuit:*

Appellant respectfully petitions that the decision of this Court herein be set aside and that a rehearing of the cause be granted.

The grounds of the application are:

First. That the unfairness practiced by the immigration officers in securing and producing the statement of Police Officer Layne was not fully considered by this Court.

Second. That the statement of Police Officer Layne was irrelevant and incompetent and that this Court was in error in considering said statement as evidence.

Third. That the evidence in the case as to the identity of appellant was not fully considered by this Court.

In the opinion of the Court, it is stated that

“The sole question is the sufficiency of the testimony to warrant the finding that she is a prostitute and found practicing prostitution, etc., subsequent to her entry.”

The only evidence offered by the government in support of the finding that this appellant *is a prostitute and was found practicing prostitution* in the United States is a statement made by Police Officer Layne to Inspector J. A. Robinson (Trans. of Record, p. 27).

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#### UNFAIRNESS.

In one of the latest reported cases on this subject, Judge Morton of the District Court of Massachusetts says:

“The essential thing is that there shall have been an honest effort to arrive at the truth by methods sufficiently fair and reasonable to amount to due process of law.”

Ex parte Chin Loy You, 223 Fed. 833-835.

This is unquestionably a correct statement of the principle involved in these administration hearings.

The question which was before the immigration officers for determination in this case was whether this individual, the Chinese woman here called Chu Tai Ngan, was a prostitute and whether or not the circumstances and environment of her life would fairly show that she had actually engaged in the practice of prostitution since her entry into the United States, irrespective of her life before her entry.

The essential thing in the administrative investigation of this question was to make an honest effort to arrive at the truth of this question by fair and reasonable methods. It was for the immigration officers to produce the evidence and for the Secretary of Labor to determine the truth from that evidence.

The record of her examination (Trans. of Record, pp. 18 to 22 inclusive) indicates that she was in custody at Angel Island on November 21, 1912, at which time she gave the name of Jee Dai Ngan as the only name she bore. She stated that she had come to the United States with her husband who was a citizen of the United States and denied that she was a prostitute, or that she had ever been arrested as a prostitute. Her denials are categorical.

“Q. How long have you been living an immoral life?

“A. I have never lived an immoral life.

“Q. Were you not arrested by the police officer three months ago and taken to the police court in a raid?

“A. No.

"Q. Sergeant Layne of the police force told Inspector Robinson he identified you as he arrested you about three months ago.

"A. It must be a mistaken identity. I have never been arrested.

"Q. The records also show that you were fined \$50 for being an immoral woman at that time and the fine was paid. What have you got to say to that?

"A. No, never such case" (Trans. of Record, pp. 19 and 20).

It will be noted that the last question by the examining inspector is not a statement of the fact as claimed by Layne. Layne only claims that the woman he arrested forfeited \$50.00 bail in the police court rather than undergo the hardship of the inevitable deportation proceedings. That she was correct in her fears is evidenced by the present results since the order for her deportation was accomplished by the single fact that she had been arrested by Layne in a place which once bore the general reputation of a house of prostitution and was by the police officer accused of being an inmate of the place.

Not one scrap of evidence was offered by the Government as to when, how, where or by whom she was arrested. It cannot be presumed, therefore, that at the time of her arrest by the immigration authorities she was in any way connected or associated with prostitutes or houses of ill-fame, or that she was at that time engaged in prostitution.

The immigration officers were familiar with the circumstances under which they secured her custody.

If they had arrested her while engaged in prostitution or in a house of prostitution, they would have produced the proof of it. But the details of her arrest is withheld from the record and we submit that this is not an honest endeavor to place before the Secretary all of the circumstances and evidence from which he could fairly draw his conclusion. The conclusion is irresistible and the presumption fair that the circumstances of the arrest did not indicate that she was on that occasion engaged in the practice of prostitution. At the time of the arrest, no evidence was in the hands of the immigration officers to support the charge that this woman was a prostitute. The circumstances of the arrest did not support it or evidence would have been produced. The examination of the woman herself failed to develop any evidence against her. Resort was therefore had to the police in the endeavor to show that the woman had been a prostitute or had practiced prostitution on some former occasion.

On November 27, 1912, a statement by Police Officer Layne, was secured by Inspector Robinson at the Hall of Justice in San Francisco (Trans. of Record, p. 27).

The charge against the woman is that she is a *prostitute*, and was found *practicing prostitution*. Layne did not state or even intimate that he had found her practicing prostitution. He did not state that he had ever been informed that she had ever practiced prostitution. He stated only that he had



been informed that some women were being held by warring highbinder tongs in a place that, on March 22, 1912, had the general reputation of a house of prostitution. He went to the place and his information proved correct as he found there a woman whom he arrested and *charged* with being an inmate of a house of prostitution.

At the time this statement was taken, appellant was in custody of the immigration officers. She had denied ever having been arrested. She had asserted on November 21, that there was a mistake as to her identity. Yet she was not taken before Layne for identification. Layne was not even shown her photograph. He was asked to identify this appellant by his recollection of a woman he had seen with Inspector Robinson and a name he supposedly had heard a week prior. All this was done without notice to the detained woman or her counsel. This statement of Layne's is all the evidence offered to the Secretary. There was no more evidence given him. There was no more to give.

This we submit was not an honest effort to arrive at the truth by methods sufficiently fair and reasonable to amount to due process of law.

In *Ex parte Chin Loy You* (supra, p. 835, the Court says:

"There is, however, a tendency in the decisions of the Supreme Court on this subject to safeguard the individual against the tremendous and arbitrary power given to the Immigration Bureau by reserving to the courts the right to scrutinize with some freedom the fairness of

the proceedings. In the Tang Tun case, 223 U. S. 673, careful consideration was given to the evidence upon which the Immigration Department acted and it was held to have been fairly taken and to be legally sufficient. See too, *Lui Hop Fong v. U. S.*, 209 U. S. 453."

We think that the tendency to hold a restraining hand on the administrative officers in their zeal to enforce the terms of the immigration law is becoming more evident in the attitude of not only the Supreme Court but on the part of the appellate Courts in the various circuits.

We think that the Courts have made it clear, even in those cases where they have endorsed the findings and decisions of the administrative officers, that the scope of their authority in considering the proceedings of the executive bureaus is considerably broader than has been conceded in the past by the officials of such bureaus.

*Lin Hop Fong v. U. S.*, 209 U. S. 453;  
*School of Magnetic Healing v. McAnnulty*,  
 187 U. S. 94;  
*Interstate Commerce Commission v. Louisville Nashville R. R. Co.*, 227 U. S. 88;  
*Chin Yow v. U. S.*, 198 U. S. 253;  
*Tang Tun v. Edsell*, 223 U. S. 673;  
*Lewis v. Frick*, 233 U. S. 291;  
*Zakonaite v. Wolf*, 226 U. S. 272;  
*Ex parte Chin Loy You* (*supra*);  
*Whitfield v. Hanges*, 222 Fed. 745;  
*Ex parte Petkos*, 212 Fed. 275;  
*U. S. v. Chin Len*, 187 Fed. 544;

U. S. v. Williams, 185 Fed. 598;  
 U. S. v. Williams, 193 Fed. 228;  
 In re Rosser, 101 Fed. 562;  
 U. S. v. Sibray, 178 Fed. 144;  
 Roux v. Commissioner of Immigration, 203  
     Fed. 413;  
 Howe v. Parker, 190 Fed. 738;  
 U. S. ex rel Klein v. Williams, 189 Fed. 915;  
 U. S. ex rel Geigow v. Uhl, 215 Fed. 373;  
 Ex parte Lam Pui, 217 Fed. 456.

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#### IRRELEVANCY AND INSUFFICIENCY.

The Immigration Bureau is reluctant to concede to the Courts any rights whatever on the question of the evidence in administrative proceedings. It has been the tendency of the bureau to claim sole and exclusive control of all matters connected with the facts and the evidence and to deny the Court the jurisdiction to interfere with their findings and decisions. Reluctantly, it has been conceded that the findings of the Secretary of Labor must be based upon some evidence. Reluctantly or otherwise, in the face of the decisions of our highest tribunals, it must be conceded that the evidence on which an administrative order is based must be relevant, competent and sufficient.

We have shown that the Courts have freely and fully considered the evidence in numerous cases.

In the case at bar, assuming that the statement of Layne is evidence and was taken fairly, we

assert that it is evidence of nothing relevant to the inquiry which was before the Immigration Bureau.

The rule as to relevancy of the evidence necessary to sustain an order of deportation is perhaps more clearly applied in *Ex parte Petkos* (supra) and *U. S. ex rel Klein v. Williams* (supra) than in most of the other cases.

In the first case the evidence was that Petkos had a skin disease known as psoriasis which the board of special inquiry found was a disease with a disagreeable odor and appearance from which they concluded that the alien would find difficulty in securing work and therefore was likely to become a public charge. That the man had the skin disease mentioned was not disputed but that it was evidence that he was likely to become a public charge was disputed with success before the Court.

The case of *U. S. ex rel Klein v. Williams* (supra) is peculiarly in point here. Klein sought admission to the United States with his wife. It was first held by the Immigration Bureau that their relations were immoral. That ground was abandoned and they were denied on the ground that they were likely to become public charges. There was plenty of evidence of a kind considered by the immigration officers but none competent or relevant to the inquiry, and the Court held that if there is no evidence that an alien immigrant is within one of the excluded classes the immigration officers have no

right to exclude and the order of deportation is a nullity.

Among the evidence considered was a telegram from Hungary that Klein had been *arrested* by the police of that country for fraud and forgery. The Court said in that regard:

“There is no evidence that they committed any crime in Hungary. The suspicion that they did so is based on a cablegram received by the Austrian Consul.

“‘Isidor Klein was arrested by this police department for fraud and forgery on March 12, 1911’.”

The Court further said:

“Nor is there any evidence that he and his wife are likely to become public charges.”

U. S. ex rel Klein v. Williams (*supra*, p. 917).

It would perhaps be impertinent for us to offer to this Court a discussion as to the meaning of relevancy of evidence. In the case at bar, the investigation was whether or not this woman is a prostitute. Evidence that she was arrested and charged with being an inmate of a house of prostitution by a police officer was not relevant to the inquiry before the immigration officers. Nor is evidence that such a woman was held by warring Chinese factions in premises having the reputation of a house of prostitution relevant to an inquiry concerning the woman's occupation. Nor is the fact that she stated to the arresting officer that she had no occupation evidence that she is a prostitute. This we conceive to be elementary. Whether



or not she forfeited \$50.00 bail has no relevancy to the issue. It is evidence of nothing other perhaps than that she was afraid of the immigration officers—in which she was justified as we have pointed out. It is not a question of flight. She was not seeking to avoid the process of the criminal law. She sought to avoid the summary proceedings which she believed awaited her at the hands of the immigration officers. Such is the evidence. If there be anything relevant in the statement of Layne, then it would be an easy matter to fasten crime on any individual who might find himself surrounded by suspicious circumstances.

It may be true that our analysis of Layne's statement may be technical, but it is in this statement alone that the proof must be found that will justify the deportation of this Chinese woman. If the proof be not there, then the presumption is in favor of the woman. If Layne had had anything further to say against the woman he would have done so. It is to be presumed that he knew nothing further regarding her. *Expressio unius est exclusio alterius* and *expressum facit cessare tacitum*.

It may be true that executive hearings are not judicial, but relevancy of evidence is necessary in the investigation of any fact in courts, bureaus or in the world at large. Furthermore, it cannot be maintained that the executive bureaus, in making an honest effort to ascertain the truth, may cast aside the fundamental principles of evidence such as the wisdom of ages has demonstrated to be only means by which facts may be safely or fairly be considered proved.

Indeed the executive officers are not permitted so to do.

“The decision shall be governed by and based upon the evidence of the hearing and that only, and that decision shall not be without substantial evidence taken at the hearing to support it.”

Whitfield v. Hanges (supra, p. 749).

See also

In re Rosser, 101 Fed. 562-567;

Ex parte Petkos (supra);

U. S. v. Sibray (C. C., supra, p. 149);

Lui Hop Fong v. U. S. (supra).

Administrative orders and findings quasi-judicial in character are void if the finding is contrary to the “indisputable character of the evidence”.

School of Magnetic Healing v. McAnnulty (supra);

Interstate Commerce Commission v. Louisville & Nashville R. R. Co. (supra);

Howe v. Parker (supra);

Cited in Whitfield v. Hanges (supra).

In Ex parte Lam Pui, 217 Fed. 456, it was held that the Court may determine, on habeas corpus, whether, *when tested by well-settled principles*, there was evidence giving the Secretary of Labor jurisdiction to order the deportation. Lam Pui entered the United States with a so-called “Section 6” certificate issued by the Chinese government. It was claimed that he secured his entry by fraud, in that he made fraudulent representations in re-

spect to his status as a student. It is held by the Court that it must be shown by evidence, and not merely by *suspicious circumstances or conjecture*, that he obtained such certificate by means of fraudulent representations. The Court held that the evidence on which the order of deportation was made was *insufficient* to sustain the charge.

In *Ex parte Lam Fuk Tak*, 217 Fed. 468, it was held that the evidence was *insufficient* to sustain the charge that the detained secured his certificate as a merchant by false representations.

It was also held that it was manifestly improper for the immigration inspector to insert in the examination *his own unverified* statement without offering himself as a witness in the regular way and his statement could not support a warrant of deportation.

We call attention in this regard that this sort of impropriety was practiced by the examining inspector against this appellant when he examined her at Angel Island, November 21, 1912 (Trans. of Record, pp. 18 to 22 inclusive).

We have pointed out that the inspector in this examination erroneously asserted that the records of the police court of San Francisco showed that the appellant had been *fined* \$50.00 upon a charge of being a prostitute. And the record of this examination shows further instances where the inspector inserted into the record for the eyes of the Secretary such unverified statements as "How long have you been living at the house of prostitution where you

were arrested last night?" and "How long have you been living an immoral life?" (Trans. of Record, p. 19). We do not believe that unfairness could be made plainer. The inspector could not testify to these things as a witness and yet they were submitted to the Secretary along with the rest of the record.

In *Lim Sam v. U. S.*, 189 Fed. 534, the Court holds that

"Notwithstanding repeated illegal acts of Chinamen attempting to enter the United States, their testimony should be carefully weighed and *there should be no radical departure from the rules of evidence* in determining the weight to be given to the testimony."

---

#### COMPETENCY.

But the statement of Layne is not evidence. It is clearly incompetent and should not have been submitted to or considered by the Secretary of Labor.

The statement of Layne is represented to have been made under oath administered by Inspector Robinson.

But Robinson had no authority to administer an oath in this case. The power of an immigrant inspector to administer an oath is limited to administering oaths touching the right of any alien to *enter* the United States.

Act of Feb. 20, 1907, C. 1134, Sec. 24, 34 Stat. 906 (Comp. Stat. 1913, Sec. 4273).

In *Whitfield v. Hanges* (supra) a very similar question arose and evidence similar to this statement of Layne's was held to be incompetent and that it was improper for even the executive officers to consider it.

The question involved was whether or not the place operated and maintained by the detained men was a resort for prostitutes.

The statements of certain prostitutes were taken by the inspector and police officers secretly and before the hearing was had, at which the detained were supposed to be afforded an opportunity to show cause why they should not be deported.

At the hearing these statements were not offered in evidence, as the Court says, for the reason that they were incompetent and could not be received in evidence.

But after the hearing, when the proceedings were closed, these statements were submitted to the Secretary as evidence that the cafe operated by the detained was a resort for prostitutes.

In that regard, the Court says:

“But whether or not there was any substantial evidence at the hearing in support of those charges and of the finding of the inspector that they were proved and of his recommendations that the aliens be deported, under which the appellees were being deprived of their liberty, *is a question of law*, the power and duty to determine which are vested in the Courts and any injurious error in deciding that question by any executive or quasi-judicial of-



ficer or tribunal is reviewable and remediable by them."

Whitfield v. Hanges (*supra*, p. 751).

Again the Court says:

"During the hearing the inspector permitted counsel for the appellees to read the statements he and the police officers had drawn from the prostitutes before the arrest was made, but neither he nor the government offered or introduced these statements in evidence, *nor would they have constituted evidence if offered, because, since the inspector had no authority to administer oath*, they were not sworn to, because they were statements of prostitutes extracted in secret in the ever present fear which the call or seizure by police or other officers on persons of their character unavoidably imposes upon them and because these women had not been called to the hearing and the appellees had no opportunity to cross-examine them.

"After the hearing, the inspector made and forwarded his report and recommendations to the effect that appellees were guilty of the charges and that they should be deported. This report states the evidence on which it is founded and discloses the fact that it is based, not on the evidence at the hearing, but on the statements of the prostitutes extracted before the arrest, which are condensed and recited in the report and on rumors and hearsay which are set forth in the report, in support of which there was no evidence in the case of which the accused had notice and which he had no opportunity to refute by evidence or otherwise."

Whitfield v. Hanges (*supra*, p. 753).

A Chinaman cannot be deported for having fraudulently entered the United States unless there is *competent* evidence to overcome the legal effect of

the certificate issued as provided by Sec. 3 of the Treaty of December, 1894.

Lui Hop Fong v. U. S., 209 U. S. 453.

The Chinaman in the last mentioned case had entered the United States as a student with a certificate provided by the Chinese government. The immigration officers sought to deport him on the ground that he had fraudulently secured his entrance.

In discussing the evidence in the case, Justice Day says:

“While this certificate may be overcome by proper evidence and may not have the effect of a judicial determination, yet having been made in conformity to the treaty, and upon it the Chinaman having been duly admitted to a residence in this country, he cannot be deported, as in this case, because of wrongfully entering the United States upon a fraudulent certificate, unless there is some *competent* evidence to overcome the legal effect of the certificate. In this record we can find no *competent* testimony which could overcome such legal effect of the certificate.”

Lui Hop Fong v. U. S. (supra, p. 463).

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#### IDENTITY.

In the case at bar we submit that the Immigration Bureau utterly failed to show the identity of this appellant with the woman Di Ung whom Layne arrested.

We have pointed out the unfairness and lack of good faith toward the detained woman in the man-

ner in which Layne's statement was secured. She had denied having been arrested by Layne. Yet Inspector Robinson made no effort to identify her by the method which ordinary care and common fairness would have dictated.

Layne said he had once arrested a woman known as Di Ung—a name in no way similar to Jee Dai Ngan, the only name given by this appellant (Trans. of Record, p. 18), or Chu Tai Ngan as she is named in the warrant (Trans. of Record, pp. 12 and 17).

Layne then goes on to say that he saw and recognized Di Ung in the person of a Chinese woman who was in custody of Inspector Robinson on November 20, 1912, who gave the name of "Gee Dai, alias Chew Tai Ngan" (Layne's statement, Trans. of Record, p. 27).

The only possible claim that the Immigration Bureau can make that this appellant was identified as the woman Di Ung is by the names last given by Layne to wit: "Gee Dai alias Chew Tai Ngan". If the bureau relies upon any principle of law that identity of name presumes an identity of person they have failed in their proof. The three names given by Layne, Di Ung, Gee Dai, and Chew Tai Ngan, may have some similarity to, but none of them are identical with the name given by appellant, Jee Dai Ngan.

But aside from this the record contains the denials of various persons that this appellant is the Di Ung

referred to by Layne (testimony offered in defense, Trans. of Record, pp. 30 to 49 inclusive).

The sworn affidavit of Benjamin I. Block, a reputable attorney of San Francisco, absolutely refutes the assumption that this appellant and Di Ung are the same person. Mr. Block was the attorney for the woman arrested by Layne and his testimony is worthy of consideration (Trans. of Record, pp. 35 and 36).

To the same effect is the affidavits of Hom Huey, the man who advanced the bail for Di Ung (Trans. of Record, pp. 39 and 40), and Wong Po Chin, the interpreter (Trans. of Record, pp. 37 and 38).

It would have been an easy matter to settle this matter by taking this woman or her photograph to Layne. But such was not done and the testimony of Mr. Block and the Chinese witnesses are unimpeached.

While we concede to the Secretary of Labor the greatest latitude in believing or disbelieving testimony placed before him, yet we deny that he has the right to totally reject the unimpeached testimony of reputable witnesses.

In *Whitfield v. Hanges* (supra) and in others of the cases cited, the Court considered fully the testimony and evidence offered on behalf of the detained parties.

“The Courts should not be expected to ignore altogether the testimony of witnesses who tell a candid and consistent story and who stand unimpeached.”

*Mar Poy v. U. S.*, 189 Fed. 288.

**DUE PROCESS.**

“The inhibition of the 14th Amendment means that no agency of the state or of the officers or of the agents by whom her powers are exerted shall deny to *any person* within her jurisdiction the equal protection of the law. Whoever, by virtue of his public position under a state government deprived anyone of life, liberty or property, without due process of law, violates that inhibition.”

Ex parte Virginia, 110 U. S. 339.

See also

Neal v. Delaware, 103 U. S. 94;

Cited in Whitfield v. Hanges (supra).

“An alien, as well as a citizen, is protected by the prohibition or deprivation of life, liberty or property, without due process of law. This principle is universal and applies to all persons within the territorial jurisdiction of the United States without regard to any difference of race, color, or nationality.”

Yick Wo v. Hopkins, 118 U. S. 356-369.

For the foregoing reasons, we earnestly and respectfully urge the Court to grant this petition for a rehearing.

Dated, San Francisco,

November 1, 1915.

Respectfully submitted,

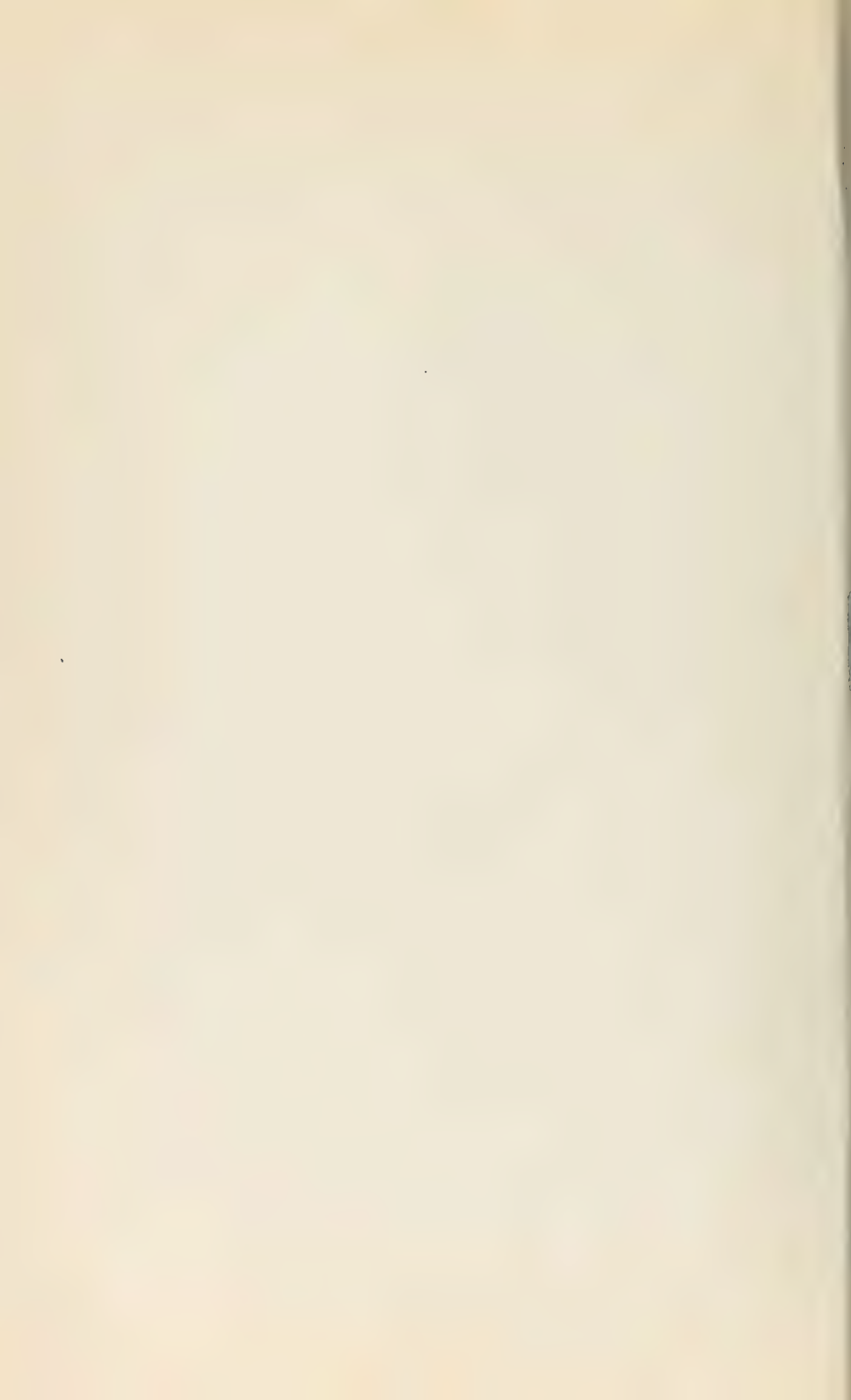
CATLIN, CATLIN & FRIEDMAN,  
*Attorneys for Appellant and Petitioner.*



## CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

HARRY C. CATLIN,  
*Of Counsel for Appellant and Petitioner.*



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

SAMUEL W. BACKUS, as Commissioner of Immigration at the Port of San Francisco,  
Appellant,  
vs.  
YIP KIM YUEN,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Northern District of California,  
First Division.

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Filed

FEB 6 - 1915

F. D. Monckton,  
Clerk.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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SAMUEL W. BACKUS, as Commissioner of Immi-  
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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St., San Francisco, Cal.,

Attorneys for Petitioner and Appellee.

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*In the District Court, First Division United States,  
Northern District of California.*

No. 15,609.

In Re YEP KIM YUEN on *Habeas Corpus*.

**Praecipe for Record on Appeal.**

The Clerk of said Court will please prepare record on appeal to include the following papers: Petition for Writ of H. C., Order to Show Cause, Demurrer, Writ of *Habeas Corpus*, Order of Discharge, Notice of Appeal, Petition for Appeal, Order Allowing Appeal, Minute Orders dated April 1, 1914 & Apr. 14, 1914, Assignment of Errors, and original exhibits introduced in evidence.

This 29th day of October, 1914.

JNO. W. PRESTON,  
U. S. Attorney.

[Endorsed]: Filed Oct. 29, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [1\*]

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*In the District Court of the United States, Northern  
District of California, First Division.*

(No. 15,609.)

In the Matter of the Application of YEP LUNG  
GON for a Writ of *Habeas Corpus* for and on  
Behalf of YEP KIM YUEN.

**Petition for Writ of Habeas Corpus.**

To the Honorable MAURICE T. DOOLING, Judge  
of the Above-entitled court,

The petition of YEP LUNG GON respectfully  
shows:

I.

That your petitioner, *Ype* Lung Gon, was born in  
the United States and is a citizen thereof and is a  
resident of San Francisco, Northern District of Cali-  
fornia. That the fact of your petitioner's citizen-  
ship has been judicially determined by a judgment  
of this court in the matter of *Yep Lung Gon* on  
*habeas corpus* No. 90,071, which said judgment was  
duly given, made and entered on the 9th day of Janu-  
ary, 1890.

II.

That *Yep Kim Yuen*, the detained person on  
whose behalf the petition is made, is the minor son  
of your petitioner and is a citizen of the United  
States of America.

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\*Page-number appearing at foot of page of original certified Record.



## III.

That the said Yep Kim Yuen is unlawfully imprisoned, detained, confined and restrained of his liberty by Samuel W. Backus, Commissioner of Immigration, at the port of San Francisco, at the Immigration Station of the United States at Angel Island or at some other place in the Northern District of California, and is about to be deported from the United States to China. [2]

## IV.

That the illegality of such imprisonment, *restraint*, detention and confinement consists of this, to wit:

That the said Yep Kim Yuen made application to be admitted to the United States at the port of San Francisco as a citizen of the United States, and as the minor son of your petitioner; that subsequent to his said application to be so admitted to the United States, the said Yep Kim Yuen was refused and denied a fair hearing in good faith by the Secretary of Labor of the United States by a manifest abuse of discretion committed to him by law and through errors and mistakes of law and against the spirit and letter of law, and denied the right to enter the United States, and in that respect your petitioner alleges:

1. That the said Yep Kim Yuen during the month of September, 1913, arrived by steamer at the port of San Francisco from China and made application to the Commissioner of Immigration at the port of San Francisco for admission to the United States as a citizen thereof and as the minor son of

your petitioner. That thereafter, in pursuance of the rules and regulations of the Department of Labor, and in pursuance of the laws of the United States, said Yep Kim Yuen was given a hearing before the proper immigration authorities touching his right to enter the United States as a citizen thereof and as the minor son of your *petition*, and at such hearing testimony and documentary evidence was submitted on behalf of said applicant before such immigration officers touching his right to enter the United States of America. That at said hearing testimony was introduced and submitted bearing upon the paternity of your petitioner to the said applicant and that at said hearing testimony and documentary evidence was submitted and introduced [3] bearing upon the citizenship of your petitioner; that thereafter, said Commissioner found that said applicant was not the son of your petitioner and was not a citizen of the United States by reason of the alleged paternity of your petitioner; that thereafter, said application for admission to the United States was denied by said Commissioner; that thereafter an appeal from said Commissioner denying said application was taken by and on behalf of the said Yep Kim Yuen to the said Secretary of Labor; that thereafter, as your petitioner is informed and believes, and therefore alleges the fact to be, the said Secretary of Labor reversed said Commissioner's decision denying said application for admittance to the United States and said finding that said applicant was not the son of your petitioner. That then and there, the said Secretary of Labor

considered matters which were never incorporated in any record had or produced at the port of San Francisco, the exact character and nature of which matter is now unknown to your petitioner and to Yep Kim Yuen, and which matters your petitioner and said Yep Kim Yuen at no time had or were given an opportunity to rebutt, deny, explain or overcome; that thereafter, the said Secretary of Labor instructed and directed the said Commissioner of Immigration at the port of San Francisco, to investigate the identity of your petitioner, the said father of the applicant, and to determine and to find whether or not the said petitioner, the father of said applicant, Yep Kim Yuen, was the same person and the same Yep Lung Gon who was, as hereinbefore set forth, judicially determined by judgment of this court to be a citizen of the United States; that thereafter, said Commissioner did through the proper immigration officers investigate the identity of your petitioner, the father of the said Yep Kim Yuen, and did determine and did find [4] that he, your said petitioner, was the same person and the same Yep Lung Gon, who was, as hereinbefore set forth, judicially determined by judgment of this Court to be a citizen of the United States. That the said Commissioner, thereafter reduced said investigation, determination and finding to a written record and did, thereafter, forward said record of said investigation, determination and finding so taken to the said Secretary of Labor. And said petitioner alleges that said record so made and so forwarded clearly established the right of said detained person

to enter the United States and reside therein;

That your petitioner is informed and believes, and therefore alleges the fact to be, that the Secretary thereafter, without reason, refused, neglected and failed to consider said investigation and the testimony and evidence adduced thereat, and said determination and findings of said Commissioner so made and the record thereof so made and so forwarded and did, without reason, consider other matters which were never incorporated in any record had or produced at the port of San Francisco, the exact character and nature of which is now unknown to your petitioner and to said Yep Kim Yuen, and that the said Yep Kim Yuen and your petitioner at no time had, or were given, an opportunity to rebut, deny, explain or overcome said matter;

That immediately thereafter the said Secretary of Labor denied the said Yep Kim Yuen the right to enter the United States, and ordered said Commissioner at the port of San Francisco, to deport the said Yep Kim Yuen to China.

V.

That all of the said proceedings so had from the time of said application, by said Yep Kim Yuen to be admitted to the United States up to and including the order of said Secretary [5] denying the right of said applicant to enter the United States and directing said commissioner to deport said Yep Kim Yuen, and all orders, investigations, findings and recommendations of said Commissioner and said Secretary and all other papers, documents and proceedings in said matter in the application of said



Yep Kim Yuen for admission into the United States are, as your petitioner is informed and believes, and therefore alleges the fact to be, incorporated in the record of the application of said Yep Kim Yuen for admission to the United States and are now in the possession of and subject to the control of the Secretary of Labor and all of which had been and now are inaccessible to your petitioner and to said Yep Kim Yuen, and your petitioner and said Yep Kim Yuen have been unable to obtain copies or access thereof, and for that reason your petitioner is unable to accompany this petition with a copy of said record or any part thereof.

## VI.

That the said Yep Kim Yuen, said detained person, has exhausted all rights and remedies and has no further remedies before the Department of Labor, unless the writ of *habeas corpus* issue out of the court as prayed for herein, directed to Samuel W. Backus, Commissioner as aforesaid, in whose custody the body of said Yep Kim Yuen now is, the said Yep Kim Yuen will be forthwith deported from the United States to China without due process of law.

WHEREFORE, your petitioner prays that a writ of *habeas corpus* be issued by this Honorable Court directed to and commanding the said Samuel W. Backus, Commissioner of Immigration at the port of San Francisco, to have and produce the body of said Yep Kim Yuen before this Honorable Court, at its courtroom in the City and County of San Francisco, Northern District of California, at the [6] opening of court on a day certain, in order that the



alleged cause of imprisonment, detention, confinement and restraint of the said Yep Kim Yuen and the legality or illegality thereof may be inquired into, and in order that in case the said imprisonment, detention, confinement and restraint are unlawful and illegal that the said Yep Kim Yuen be discharged from all custody, detention, imprisonment, confinement and restraint.

Dated this 4th day of March, 1914.

LUCIUS L. SOLOMONS,  
CATLIN & CATLIN,

Attys. for Petitioners.

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

Yep Lung Gon being first duly sworn, deposes and says: That he is the petitioner named in the foregoing petition. That he has heard read the same and knows the contents thereof and the same is true of his own knowledge and belief except as to those matters which are therein stated on his information and belief and as to those matters that he believes it to be true.

YEP LUNG GON.

Subscribed and sworn to before me this 4th day of March, 1914.

[Seal]

C. W. CALBREATH,  
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Mar. 4, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [7]

*In the District Court of the United States, Northern  
District of California, First Division.*

(No. 15,609.)

In the Matter of the Application of YEP LUNG  
GON for a Writ of *Habeas Corpus* for and on  
Behalf of YEP KIM YUEN.

**Order to Show Cause.**

Upon the reading and the filing of the petition herein for writ of *habeas corpus*, and good cause appearing therefor, it is hereby ordered that Samuel W. Backus, Commissioner of Immigration of the United States, at the port of San Francisco, be and appear on the 7 day of March, 1914, at the hour of 10 o'clock thereof, at a courtroom of this court, third floor of the United States Post Office Building, Seventh & Mission Streets, in the City and County of San Francisco, State of California, to show cause, if any there be, why a writ of *habeas corpus* should not issue as prayed for herein, and

IT IS FURTHER ORDERED that pending the determination of this matter that the custody of said Yep Kim Yuen, the detained person, on whose behalf the petition for writ of *habeas corpus* is made herein, shall not change, and the said Yep Kim Yuen shall not remove from the Northern District of California and from the jurisdiction of this Court until further order of this Court.

Dated this 4 day of March, 1914.

M. T. DOOLING,

Judge of the United States District Court, Division  
One.

[Endorsed]: Filed Mar. 4, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [8]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

In the Matter of the Application of YEP LUNG GON for a Writ of *Habeas Corpus*, for and on Behalf of YEP KIM YUEN.

**Demurrer to Petition for Writ of Habeas Corpus.**

Now comes the respondent, Samuel W. Backus, Commissioner of Immigration at the port of San Francisco, and demurs to the petition on file herein on the following grounds:

I.

That said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of *habeas corpus* or any relief thereon.

II.

That said petition is insufficient in that the statements in the petition relative to the record of the testimony taken on the hearing for the order of deportation of the applicant, Yep Kim Yuen, are statements of conclusions of law.

WHEREFORE, respondent prays that the writ of *habeas corpus* be denied.

JOHN W. PRESTON,

United States Attorney.

WALTER E. HETTMAN,

Assistant United States Attorney.

Attorneys for Respondent.

[Endorsed]: Filed Mch. 28, 1914. W. B. Maling,  
Clerk. By Francis Krull, Deputy. [9]

---

**[Order Overruling Demurrer and Directing Issuance  
of Writ of Habeas Corpus, etc.]**

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 1st day of April, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 15,609.

In the Matter of YEP KIM YUEN on *Habeas Corpus*.

In this matter, the demurrer heretofore filed herein by the respondent, the United States of America, this day came on regularly for hearing. Walter E. Hettman, Assistant United States Attorney, appearing for respondent, and John C. Catlin, Esq., appearing for detained. Herbert F. Dugan and Dr. J. E. Gardner were each duly sworn and examined on behalf of petitioner. The demurrer was then argued by respective parties and submitted to the Court. The Court thereupon ordered that said demurrer be, and the same is hereby overruled, and that a Writ of *Habeas Corpus* issued as prayed in the Petition herein, and that the custody of said detained be not disturbed until the further order of this court. [10]

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 15,609.

In the Matter of YEP KIM YUEN on *Habeas Corpus*.

**Writ of Habeas Corpus.**

The President of the United States of America, to  
the Commissioner of Immigration, Port of San  
Francisco, Calif., Angel Island, Calif., Greeting:

YOU ARE HEREBY COMMANDED that you  
have the body of the said person by you imprisoned  
and detained, as it is said, together with the time and  
cause of such imprisonment and detention, by what-  
soever name the said person shall be called or charged,  
before the Honorable M. T. Dooling, Judge of the  
District Court of the United States, for the Northern  
District of California, at the courtroom of said Court,  
in the City and County of San Francisco, California,  
on the 11th day of April, A. D. 1914, at 10 o'clock  
A. M. to do and receive what shall then and there be  
considered in the premises.

AND HAVE YOU THEN AND THERE THIS  
WRIT.

WITNESS, the Honorable M. T. DOOLING,  
Judge of the said District Court, and the seal thereof  
at San Francisco, in said District, on the 2d day of  
April, A. D. 1914.

[Seal]

W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [11]



**Return on Service of Writ.**

United States of America,  
Northern District of California,—ss.

I hereby certify and return that I served the annexed Writ of *Habeas Corpus*, on the therein-named Commissioner of Immigration, Port of San Francisco, Cal., Angel Island, Cal., by handing to and leaving a true and attested copy thereof with Samuel W. Backus, Commissioner of Immigration, Port of San Francisco, Cal., Angel Island, Cal., personally at Angel Island, Cal., in said District, on the 6th day of April, A. D. 1914.

J. B. HOLOHAN,  
U. S. Marshal,  
By I. W. GROVER,  
Office Deputy.

[Endorsed]: Filed Apr. 6, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [12]

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At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 14th day of April in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, District Judge.

No. 15,609.

In the Matter of YEP KIM YUEN on *Habeas Corpus*.

**Minute Order Discharging Detained from Custody.**

In this matter John C Catlin, Esq., was present with petitioner herein, in open court. W. E. Hettman, Esq., appeared on behalf of the Respondent. The Court ordered that the detained, Yep Kim Yuen be, and he is hereby discharged from custody and that he go hence without day. Thereupon, Mr. Hettman filed Notice of Appeal from such Order of Discharge and on motion of Mr. Hettman, the Court ordered that said Yep Kim Yuen furnish Bond in the sum of \$100.00, pending the determination of said appeal. [13]

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**[Order Discharging Person in Whose Behalf the Writ of Habeas Corpus was Sued Out from Custody.]**

*In the District Court of the United States, Northern District of California.*

No. 15,609.

In the Matter of YEP KIM YUEN on *Habeas Corpus*.

This matter having been regularly brought on for hearing upon the issues joined herein, and the same having been duly heard and submitted, and due consideration having been thereon had, it is by the Court now here Ordered, that the said named person in whose behalf the writ of *habeas corpus* was sued out, is illegally restrained of his liberty, as alleged in the petition herein, and that he be, and he is hereby dis-

charged from the custody from which he has been produced, and that he go hence without day.

Entered this 14, day of April, 1914.

W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Endorsed]: Filed Apr. 14, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 15,609.

In the Matter of YEP KIM YUEN on *Habeas Corpus*.

**Petition for Appeal.**

Now comes the respondent, SAMUEL W. BACKUS, appellant herein, and says:

That on the 1st day of April, 1914, the above-entitled court rendered, made and entered its order and judgment overruling the demurrer to the petition for a writ of *habeas corpus* and granting the petition for a writ of *habeas corpus* as prayed for on file herein, in which said order and judgment certain errors were made to the prejudice of this appellant, all of which will appear more in detail from the Assignment of Errors to be filed hereafter.

WHEREFORE, this appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals for the Ninth Circuit, of the United

States, for the correction of the errors so complained of and further, that a transcript of the record, proceedings and papers in the above-entitled matter, duly authenticated, may be sent and transmitted to the said Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated San Francisco, April 14th, 1914.

JOHN W. PRESTON,  
United States Attorney, Attorney for Respondent  
and Appellant.

WALTER E. HETTMAN,  
Asst. U. S. Attorney. [15]

Service by copy admitted this 14th day of April,  
1914.

LUCIUS L. SOLOMONS, and  
CATLIN & CATLIN,

Attys. for Applicant for writ of *habeas corpus*.

[Endorsed]: Filed April 14th, 1914. W. B. Mal-  
ling, Clerk. By Lyle S. Morris, Deputy. [16]

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*In the District Court of the United States, in and for  
the Northern District of California, First Divi-  
sion.*

In the Matter of YEP KIM YUEN on *Habeas  
Corpus*.

### **Assignment of Errors.**

Comes now Samuel W. Backus, Commissioner of Immigration at Angel Island, California, respondent in the above-entitled cause, by his attorneys, John W. Preston, United States Attorney, and Walter E. Hettman, Assistant United States Attorney, and for

his appeal herein, assigns the following errors which he avers occurred upon the trial or hearing of the petition for a writ of *habeas corpus* and upon which he will rely upon appeal to the Circuit Court of Appeals for the Ninth Circuit, to wit:

I. That the Court erred in granting the writ of *habeas corpus* and discharging the alien Yep Kim Yuen.

II. That the Court erred in holding that it had jurisdiction to issue a writ of *habeas corpus* in the above-entitled cause, as prayed for in the petition.

III. That the Court erred in holding that the allegations contained in said petition for a writ of *habeas corpus* were sufficient in law to justify the granting and issuing of a writ of *habeas corpus*. [17]

IV. That the Court erred in considering affidavits in the case which had already been passed upon and determined by the Secretary of Labor.

V. That the Court erred in overruling the decision of the Secretary of Labor on the question of fact, namely, in determining the identity of Yep Lung Gon, the father of Yep Kim Yuen with a former District Court record in and for the Northern District of California, No. 90,071.

VI. That the Court erred in making a finding of fact that the said Yep Lung Gon, the father of Yep Kim Yuen, was the same person who was discharged as a citizen of the United States under the name of Yep Lung Gon in 1890 in the said District Court, case No. 90,071.

VII. That the Court erred in weighing and considering evidence upon the question of fact already



determined by the Secretary of Labor on the question of the identity of Yep Lung Gon with the said District Court record of 1890.

VIII. That the Court erred in admitting and considering testimony on the question of the similitude of the handwriting signature of Yep Lung Gon and the handwriting and signature contained in the said court record of 1890.

IX. That the Court erred in admitting and considering testimony on the question of the similitude of Yep Lung Gon with a photograph contained in said District Court record of 1890.

X. That the Court erred in deciding that Yep Lung Gon was a citizen of the United States and entitled to have the care, custody and control of his minor son, Yep Kim Yuen in the United States. [18]

WHEREFORE, appellant prays that the judgment and order of the United States District Court in and for the Northern District of California, made and entered herein in the office of the clerk of the said court on the 14th day of April, A. D. 1914, granting the writ of *habeas corpus* be reversed.

JNO. W. PRESTON,  
United States Attorney.

WALTER E. HETTMAN,  
Asst. United States Attorney.

San Francisco, Cal., October 28, 1914.

Service of the within copy of assignment by copy admitted this 28 day of Oct. 1914.

CATLIN & CATLIN,  
Attorneys for —————.

[Endorsed]: Filed Oct. 29, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [19]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 15,609.

In the Matter of YEP KIM YUEN on *Habeas Corpus*.

**Order Allowing Appeal.**

On the 14th day of April, 1914, came the respondent herein, Samuel W. Backus, through his attorneys John W. Preston, United States Attorney, and Walter E. Hettman, Assistant United States Attorney, and filed herein and presented to this Court, his petition praying for the allowance and appeal to the Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and papers upon which the judgment herein was rendered, duly authenticated, may be sent and transmitted to the Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

On consideration whereof, the Court hereby allows the appeal herein prayed for, and that a certified transcript of all the record and all proceedings be prepared and presented by the clerk of this court to the Circuit Court of the United States for the Ninth Circuit, in the time prescribed by law; and ordered further that the said petitioner shall be allowed on

bail in the sum of one hundred dollars, during the pendency of said appeal.

M. T. DOOLING,  
- U. S. District Judge.

Dated April 14th, 1914. [20]

Service by copy admitted this 14th day of April, 1914.

LUCIUS L. SOLOMONS and  
CATLIN & CATLIN,

Attys. for Applicant for Writ of *habeas corpus*.

[Endorsed]: Filed April 14th, 1914. W. B. Mal-  
ing, Clerk. By Lyle S. Morris, Deputy. [21]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

No. 15,609.

In the Matter of YEP KIM YUEN, on *Habeas  
Corpus*.

### **Notice of Appeal.**

To the Clerk of said Court, and to John Catlin, Esq.,  
and Lucius L. Solomons, Esq.:

You and each of you will please take notice that the respondent herein, Samuel W. Backus, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on the 1st day of April, 1914, overruling the demurrer to the Petition for a writ of *habeas corpus* and granting the Petition for a writ of *habeas corpus* filed herein.

Dated San Francisco, April 14th, 1914.

JNO. W. PRESTON,

United States Attorney.

WALTER E. HETTMAN,

Assistant U. S. Attorney, Attorney for Respondent  
and Petitioner.

Service by copy admitted this 14th day of April,  
1914.

LUCIUS L. SOLOMONS and

CATLIN & CATLIN,

Attys. for Applicant for Writ of *habeas corpus*.

[Endorsed]: Filed April 14th, 1914. W. B. Mal-  
ling, Clerk. By Lyle S. Morris, Deputy. [22]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

No. 15,609.

In the Matter of YEP KIM YUEN, on *Habeas  
Corpus*.

**Order Withdrawing Exhibits [for Use on Appeal].**

Good cause appearing therefor, it is hereby or-  
dered that all original exhibits on file in the above-  
entitled matter, be, and they are hereby allowed to  
be withdrawn for the purpose of being used on the  
appeal of the above-entitled matter to the Circuit  
Court of Appeals.

Dated October 29th, 1914.

M. T. DOOLING,

United States District Judge.

[Endorsed]: Filed Oct. 29, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [23]

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**Certificate of Clerk U. S. District Court to Transcript on Appeal.**

I, W. B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 23 pages, numbered from 1 to 23 inclusive, with the accompanying exhibits, 9 in number (transmitted separately in their original form), contain a full, true, and correct transcript of certain records and proceedings as the same now remain on file and of record in the office of the Clerk of said District Court, in the matter of Yep Kim Yuen, on *habeas corpus*, No. 15,609, and which said Transcript on Appeal is made up pursuant to and in accordance with "Praeceptum for Record on Appeal" (copy of which is embodied herein), and the instructions of Attorney for Respondent and Appellant herein.

I further certify that the cost for preparing and certifying the foregoing Transcript on Appeal is the sum of Ten Dollars and Eighty Cents (\$10.80). Annexed hereto is the original Citation on Appeal issued herein (paged 25 and 26).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said District Court this 7th day of January, A. D. 1915.

[Seal]

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk. [24]



**[Citation on Appeal.]**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Yip Kim Yuen, and to His Attorney John C. Catlin, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Samuel W. Backus, Commissioner of Immigration, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the No. Dist. of California, this 9th day of December, A. D. 1914.

M. T. DOOLING,

United States District Judge. [25]

[Endorsed]: No. 15,609. United States District Court for the Northern District of California, First Div. Samuel W. Backus, Com. of Imm., Appellant, vs. Yip Kim Yuen. Citation on Appeal. Filed Dec. 11, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Service of the within Citation on appeal by copy admitted this 10th day of Dec. 1914.

CATLIN & CATLIN,  
Attorneys for Defendant.

**[Certificate of Clerk U. S. District Court to Original Exhibits.]**

I, W. B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the annexed exhibits, 7 in number, together with two volumes of immigration records, to be original exhibits filed in this office in the matter of Yep Kim Yuen, on *habeas corpus*, No. 15,609; said exhibits are transmitted in accordance with an order of this Court, dated October 29th, 1914, a copy of which is included in the Transcript of Appeal herewith.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said District Court this 7th day of January, A. D. 1915.

[Seal]

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

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[Endorsed]: No. 2562. United States Circuit Court of Appeals for the Ninth Circuit. Samuel W. Backus, as Commissioner of Immigration at the Port of San Francisco, Appellant, vs. Yip Kim Yuen, Appellee. Transcript of Record. Upon Appeal

from the United States District Court for the Northern District of California, First Division.

Filed January 7, 1915.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. 2562.

SAMUEL W. BACKUS, as Commissioner of Immigration, etc.,

Appellant,

vs.

YEP KIM YUEN,

Appellee.

**Stipulation Omitting Original Exhibits from Printed Transcript.**

It is hereby stipulated by and between the respective parties hereto that the original exhibits heretofore transmitted by the Clerk of the District Court in and for the Northern District of California, pursuant to an order of the said District Court, be omitted from the printed transcript of the record.

Dated January 12th, 1915.

JNO. W. PRESTON,  
United States Attorney.

WALTER E. HETTMAN,  
Assistant U. S. Attorney, Attorneys for Appellant.  
CATLIN & CATLIN,  
Attorneys for Appellee.

[Endorsed]: No. 2562. In the Circuit Court of Appeals of the United States for the \_\_\_\_\_.  
Samuel W. Backus, Appellant, vs. Yep Kim Yuen.  
Stipulation Omitting Original Exhibits from Printed Transcript. Filed Jan. 13, 1915. F. D. Monckton, Clerk.

No. 2562.

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IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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SAMUEL W. BACKUS, as Commissioner of Immigration  
at the Port of San Francisco,

Appellant,

vs.

YEP KIM YUEN,

Appellee.

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**BRIEF FOR APPELLANT**

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JOHN W. PRESTON,  
United States Attorney,

WALTER E. HETTMAN,  
Assistant United States Attorney,  
Attorneys for Appellant.

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Filed this.....day of June, 1915.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

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THE JAMES H. BARRY COMPANY  
SAN FRANCISCO

JUN 15 1915  
F. D. Monckton





No. 2562.

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IN THE

**United States Circuit Court of Appeals**

FOR THE

NINTH CIRCUIT

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SAMUEL W. BACKUS, as Commis-  
sioner of Immigration at the Port of  
San Francisco,

*Appellant,*

vs.

YEP KIM YUEN,

*Appellee.*

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BRIEF FOR APPELLANT.

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FACTS.

The certified record from the Department of Labor which is filed as an exhibit in its original form in this case shows that the alien Chinese boy, Yep Kim

Yuen, fifteen years of age, applied for admission at San Francisco, California, as the son of a citizen of the United States, Yep Lung Gon, on the 20th day of September, 1913. The father alleged that he was a citizen by reason of his birth in this country, in San Francisco some 46 years before, and that he departed for China when quite young and returned to the United States in 1890, when he was admitted on *habeas corpus* proceedings by the District Court as a citizen. A certified copy of this court record No. 9071, with a photograph affixed thereto is attached to the original immigration record in the case of the father, Yep Lung Gon, and is filed as one of the exhibits in the case of his son, Yep Kim Yuen. The father's record shows that subsequent to the year 1890, he made two trips to China, being admitted on each occasion on the presentation of a copy of this court record, his last admission occurring in May, 1913, several months before his son applied for permission to enter. On September 30, 1913, the Commissioner of Immigration, Samuel W. Backus, after an extensive hearing at the Immigration Station at Angel Island, California, filed his finding and decree (Record, 24-26). The Commissioner ruled that the father's status as a citizen was apparently valid, but that the relationship of father and son was not satisfactorily established because of the many discrepancies in the testimony. The alleged son was accordingly denied admission. That portion of the Commissioner's

finding applicable to this discussion (Record, 26-24) is set forth as follows:

"According to the alleged father he is a *res adjudicata* native. He claims to have been admitted from a visit to China by United States District Court, Northern District of California, proceeding No. 9071. A copy of said record shows that a Chinaman of the same name was discharged by said court January 9, 1890, as a native. He made application to depart as a native in July, 1912, the investigating inspector recommending unfavorably because in his opinion, the then applicant was not the identical person in whose behalf said court record was issued, the photograph attached to said record not comparing favorably with the then applicant. However, he was favorably endorsed by this office, as he was shown to have been admitted at this port, by this office, as a native on two occasions by virtue of the finding of the court proceeding No. 9071 above mentioned."

. . . . .

"Although there seems to be considerable resemblance between the applicant and his alleged father, judging from the photographs, it seems that the foregoing contradictions and inconsistencies would not have materialized if it were a fact that the relationship claimed exists. The applicant is accordingly denied admission and advised of his right to appeal."

On the appeal the Secretary of Labor, in affirming the decision of Commissioner Backus in excluding the boy, reversed the Commissioner on the questions of fact in that he ordered the boy deported upon different grounds. When the matter was first referred

to the Secretary of Labor the Acting Commissioner-General reopened the case and made a further examination and determined that the relationship of father and son did exist and that those representations were bona fide, but that the father was an imposter in claiming citizenship under the court record in the writ of *habeas corpus* issued in 1890 to a Chinese person of the name of Yep Lung Gon.

To show what a fair and painstaking review was made of the evidence the court is referred to the memorandum for the Acting Secretary (Record, 35-36) which shows the methods pursued in the Department of Labor to ascertain the identity of the father with the photograph attached to the court record.

The Acting Secretary, upon reviewing the case (Record, 35-36), signed the following order:

“DEPARTMENT OF LABOR  
Office of the Assistant Secretary  
Washington

53560-258

November 18, 1913.

Memorandum for the Commissioner General in re  
YEP KIM YUEN:

The question of the identity of the father with the person of same name decided in 1890 to be an American citizen, appears to be the decisive one in this case. As appellant has not yet had his 'day in court' on that question, the case is reopened for proof of identity.

In the absence of such proof after reasonable opportunity to produce it, exclude.

LOUIS F. POST,  
Acting Secretary.”



The case was then reopened and the entire record was sent back to San Francisco on December 1, 1913, for a personal comparison of the father with the photograph in the court record No. 9071. On December 10, 1913, two witnesses were called and testified on behalf of the father in the matter of his identity. Subsequently two affidavits with photographs attached were filed in support of the father's claim (Record, 65-68). On February 6, 1914, the complete record containing all the supplemental evidence taken, was again forwarded to the Commissioner-General of Immigration at Washington, D. C. (Record, 70-73) by the Commissioner of Immigration at Angel Island, California. When the matter was finally referred to the Secretary of Labor (Record, 74-75) the following memorandum of decision which bears the signature of approval of the Acting Secretary J. B. Densmore, was filed:

"U. S. DEPARTMENT OF LABOR  
BUREAU OF IMMIGRATION  
WASHINGTON

WJP

In answering refer to

No. 53560/258

Feb. 14, 1914.

In re APPEAL: Case of YEP KIM YUEN, alleged son of a citizen.

*Supplemental Memorandum*

for THE ACTING SECRETARY:

This case was originally presented to the Department in November, last, upon a memorandum (indicated by marker hereunder) which contained a complete summary of the evidence, and in which

the Bureau reached the conclusion that the alleged father of the applicant had failed to satisfactorily establish his status as a citizen of the United States and that the applicant was not, therefore, entitled to admission. At the suggestion of the Acting Secretary (Mr. Post) the case was returned to the San Francisco office in order that the alleged father might have a further opportunity to establish his citizenship by the submission of evidence showing his identity with the person (who he claims to be) discharged on *habeas corpus* proceedings as a citizen by the District Court at San Francisco on January 9, 1890 (court record No. 9071). The record is now returned with transcript of the additional evidence taken, and certain letters, etc., which have been filed by those interested in the case.

In view of the additional showing (particularly in view of the reported attitude of the alleged father with respect to the applicant) the Bureau is quite satisfied that the boy is, in fact, the genuine son of this man. The question of citizenship of the alleged father, however, stands practically where it did when the record was previously considered by the Bureau and the Department. It is still contended that he is the party who was discharged as per certified copy of court record submitted, and is the person represented by the photograph which appears in the original court record and copies of which are contained in the record herewith. From a very minute comparison of these photographs the Bureau is not able to believe that this can possibly be (in this connection see previous Bureau memorandum, in which is reported an interview with Chief Flynn, of the Secret Service Division of the Treasury Department, to whom the photographs above referred to were exhibited).

There is no question but that the alleged father has been resident in this country for a great many years—possibly as long as he claims he has—but

this circumstance does not relieve him of the necessity of establishing the contention which he makes of having been born in the United States. The most convincing evidence in his favor is the fact that Chinese Inspector and Interpreter Gardner compared his signature, made quite recently, in connection with the identification papers which were filed in the present applicant's behalf, with the signature of the party discharged by the court which appears on the original court record, and was of the opinion that they represented the signatures of the same person. He suggests the possibility of a substitution of photographs (not altogether unknown in these cases) on the original court record, but nowhere in the record is it stated that the original court file in the matter bears any indications of having been tampered with.

After a very careful consideration of all of the evidence of record in this case, the Bureau is again constrained to recommend that the excluding decision be **AFFIRMED** and **DEPORTATION** ordered.

F. H. LARNED,  
Acting Commissioner-General.

Approved

J. B. D.

WJP-c

Advise Mr. Wolf.

Mr. Wolf desires an oral hearing  
before the Actg. Secy.

## DEPARTMENT OF LABOR

WJP

2/17/1914.

Memo. for consideration in connection with case  
of Yep Kim Yuen.

This case has heretofore been discussed fully with Mr. Wolf, and he is aware of the views entertained in the Bureau with respect to the identity of the alleged father with the person discharged

by the Dist. Court, and also the views of Chief Flynn, of the Secret Service, T.D. At my suggestion, in order that there might be no possibility of mistake, he and I to-day called at Police Headquarters with the photographs. Chief Boardman called in his two identification experts and exhibited the photographs to them. Both were positive and emphatic in asserting that they could not possibly be photographs of one and the same person, assigning the same reasons as did Chief Flynn and as appear in former memo. of the Bureau. It seems to me the fraudulency of the case is established.

W. J. P."

#### LAW.

The formal assignment of errors (Trans., 16) is not to be considered a part of this appeal, but the general error alleged by appellant is that the questions of fact determined by the Secretary of Labor were not open to review by the District Court upon the hearing of the petition for a writ of *habeas corpus*. On the hearing of the Government's demurrer (Trans., 11) the District Court took the testimony of Herbert F. Dugan and John E. Gardiner, two witnesses who were called on behalf of the alien. Their testimony was that they were of the opinion that the picture attached to the court record No. 9071, being the writ of *habeas corpus* issued in 1890, was the likeness of the father, Yep Lung Gon. Witness Gardiner further testified that the signature upon the court record appeared to be the signature of father. At the conclusion of this testimony the District Court over-



ruled the demurrer and reversed the findings of fact of the Secretary of Labor by holding that the father's claims to citizenship in the United States were not valid and therefore his son, Yep Kim Yuen, could not be admitted into the country.

It is a rule long established by decisions of the United States Supreme Court that where the immigration proceedings have been regular and all hearings fair, so that the alien has had every opportunity to present his claims, the District Court on a petition for a writ of *habeas corpus* will not disturb the findings of fact of the Secretary of Labor. A hearing could not possibly have been fairer than that given by the immigration officials and the Secretary of Labor in this case, particularly since such exhaustive efforts were made to avoid all possibility of deciding erroneously.

The question of fact decided by the Secretary of Labor in this case that the father had not established his claims to citizenship in the United States and therefore his son, Yep Kim Yuen, could not enter, was the final decision in this matter. In the case of *United States v. Ju Toy*, 198 U. S., 253; 25 Sup. Ct., 644; 49 L. ed., 1040; it was held that where a Chinese seeks entrance into the country, claiming citizenship in the United States, has been denied admission upon a fair question of fact presented to the Secretary of Labor, the courts have no jurisdiction to overrule the secretary and compel the admission of such a person



on the ground that the conclusion of the immigration officials was wrong:

“Under the Chinese exclusion and the immigration laws, where a person of Chinese descent asks admission to the United States, claiming that he is a native-born citizen thereof, and the lawfully designated officers find that he is not, and upon appeal that finding is approved by the Secretary of Commerce and Labor, and it does not appear that there was any abuse of discretion, such finding and action of the executive officers should be treated by the courts as having been made by a competent tribunal, with due process of law, and as final and conclusive; *and in habeas corpus proceedings, commenced thereafter, and based solely on the ground of the applicant's alleged citizenship, the court should dismiss the writ, and not direct new and further evidence as to the question of citizenship.*”

Justice Holmes in the case of *Chin Yow v. United States*, 208 U. S., 8, 11; 28 Sup. Ct., 201; 52 L. ed., 369, also spoke most emphatically on the finality of the Secretary of Labor's rulings on a question of citizenship:

“If one alleging himself to be a citizen is not allowed a chance to establish his right in the mode provided by those statutes, although that mode is intended to be exclusive, the statutes cannot be taken to require him to be turned back without more. The decision of the Department is final; but that is on the presupposition that the decision was after a hearing in good faith, however summary in form. As between the substantive right of citizens to enter, and of persons alleging them-

selves to be citizens to have a chance to prove their allegation on the one side and the conclusiveness of the Commissioner's fiat on the other, when one or the other must give way, the latter must yield. In such a case something must be done, and it naturally falls to be done by the courts. In order to decide what we must analyze a little. . . . But, unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and, we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

It is true that the father, Yep Lung Gon, had been allowed to go to China and return several times as a citizen, simply upon a presentation of the court record in question and it is admitted that the immigration officials at Angel Island, California, formerly believed that the father was the bona fide owner of this court decision. In allowing his various entries into the United States, under a previous mistake, the immigration department is in no way bound and it has repeatedly been held by the courts, including the Supreme Court, that their former favorable decisions were not *res adjudicata*, but were subject to review and change at any time. *The Japanese Immigration Case*, 189 U. S., 281; *Pearson v. Williams*, 202 U. S., 281; *U. S. v. Williams*, 175 Fed., 275.

Having become satisfied that the father of the applicant had previously perpetrated a fraud upon the Government and was endeavoring to repeat such illegal use of the court document in the case of his son, the Department could hardly have taken any

other action than to order deportation, and its decision was reached after a most painstaking investigation and full opportunity afforded counsel, both in Washington and in San Francisco, California, to submit evidence.

The finding of the Department on the question of identity was purely a question of fact, and under the numerous court decisions was final and conclusive. The District Court, however, assumed jurisdiction apparently upon the theory that the writ of *habeas corpus* issued in 1890, on which the photograph was submitted for identity was an old record in said court and for that reason it had jurisdiction to make the comparison. On taking additional evidence the District Court reached a conclusion directly opposed to that determined by the administrative officers upon whom Congress has seen fit to confer exclusive jurisdiction. That this was error the appellant respectfully cites to this Honorable Court the case of *ex parte Long Lock*, 173 Fed., 208, in which Judge Ray decided after a most careful review of the Supreme Court decisions above quoted that the District Court could not reverse the Secretary of Labor on a question of fact where that official had determined that a court record giving a Chinese person American citizenship was not sufficiently identified with him and had ordered his exclusion from the United States.

It is not disputed that the District Court may take judicial notice of its own records and that in a case where the question of a person's identity with a court

record comes up *de novo* before the court, jurisdiction is accorded to determine the question. It is admitted that if the court should release from custody a person as a citizen of the United States upon a writ of *habeas corpus* today and that tomorrow this same person should appear before the same court and the court should take testimony, with the result that it identifies this person as the person who was granted the writ on the previous day, that the jurisdiction of the court would not be questioned. The court would, in such a circumstance, be determining the matter exclusively concerning its own records. In the case of the father, Yep Lung Gon, however, there is an intervening circumstance which changes the whole matter. The Secretary of Labor has been given the power to determine an alien's status and this was done entirely within his prerogative. The Secretary does not in any way attack the validity of this court record of 1890. He does not in any way question that decision nor that the picture attached is the photograph of some Chinese person bearing the name of Yep Lung Gon and who appeared before the court and was discharged. But where the decision of the Secretary has intervened in determining the question of identity it is an unwarranted assumption of power for the District Court to rule that that executive officer was wrong.

Judge Ray in *ex parte Long Lock, supra*, had this



same question before him and his meaning is unequivocal.

"Inspector Sperry expressly states here that he did not think the identity of this petitioner with the Long Lock of the certificate had been established. The Department of Commerce and Labor was not satisfied, and this court is far from satisfied, that this petitioner is Long Lock apprehended and tried before and discharged by Commissioner Johnson in 1897. Where and when he obtained the certificate issued by Johnson is not shown, except by the bare testimony of the petitioner himself, who bore and was known by a different name in 1905 and 1907, and whose credibility was shaken on his examination before Inspector Sperry. It is not shown that from 1897 to 1905 the petitioner bore the name Long Lock.

*"This petitioner was before Inspector Sperry, who saw him and observed his manner of giving testimony. The inspector was far better able to judge of his candor and truthfulness than any court or judge can be, and, under the decisions of the Supreme Court, in my judgment, it would be an unwarranted assumption of power to override the prior determinations of the executive officers and department to whom Congress has lawfully and constitutionally confided the decision of the question of fact."*

Respectfully submitted.

JNO. W. PRESTON,  
United States Attorney,  
W. E. HETTMAN,  
Assistant United States Attorney,  
Attorneys for Appellant.

Dated June 21, 1915.



No. 2562

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IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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SAMUEL W. BACKUS, as Commissioner of Immigration  
at the Port of San Francisco,  
vs. Appellant,

YEP KIM YUEN,  
Appellee.

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**BRIEF FOR APPELLEE**

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CATLIN, CATLIN & FRIEDMAN, and  
LUCIUS L. SOLOMONS,  
Attorneys for Appellee.

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Filed this .....day of July, 1915.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

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**BRIEF FOR APPELLEE**

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**FACTS.**

It is conceded by the Government that Yep Kim Yuen is the son of Yep Lung Gon, who claims to be a native born citizen of the United States. It is also

conceded that the father has been a resident of the United States for a long period of time and has made two trips to China and was permitted to return to the United States as a citizen thereof on both occasions after inspection by the proper immigration authorities.

The proceedings before the Department of Labor in the appellee's case may be summarized as follows: Yep Kim Yuen arrived from China at the Port of San Francisco, on September 20, 1913; he immediately applied for admission as a citizen, basing his claim upon the citizenship of his father; he was given a hearing, at which, among other evidence, the father produced a certified copy of Habeas Corpus proceedings in the United States District Court of the Northern District of California had in 1890, by which he was adjudged to be a native born citizen of the United States. After a consideration of the evidence, the Commissioner of Immigration at the Port of San Francisco, decided that the father's claim of citizenship was good, from which position he never afterward retreated, but that the applicant, Yep Kim Yuen, had failed to satisfactorily establish his claim that he was the son of Yep Lung Gon, the American citizen. An appeal was thereupon taken by Yep Kim Yuen to the Secretary of Labor, who reversed the finding of the Commissioner on the question of the boy's nativity, deciding that he was in fact the son of Yep Lung Gon. The Secretary, or rather the Acting Secretary, then went further and, taking up the question

of the father's identity, sent the case back to the Commissioner at San Francisco with instructions to *require the father to prove himself to be the identical Yep Lung Gon who was in 1890 adjudicated a citizen by the District Court.* "In absence of such *proof* after reasonable opportunity to produce it," the instructions to the Commissioner were to exclude the son. (Memorandum of Acting Secretary, Rec. 35-36—also quoted in Government's brief at page 4). Upon receipt of these instructions, the Commissioner directed the father to produce proof of his identity, which he did. Upon consideration of this evidence, the Commissioner, as is alleged in subdivision 1 of paragraph IV of the petition for a writ of Habeas Corpus (Trans. p. 5), did again determine and find that the father was the same Yep Lung Gon who was adjudged a citizen in 1890, that is to say he did not alter his original judgment in favor of the father.

The applicant was not permitted to land however, but was still detained on Angel Island while the question of his father's identity was referred to the Immigration Bureau at Washington, where another separate and private investigation was conducted as will appear by inspection of the Supplemental Memorandum for the Acting Secretary, dated February 18, 1914. (Record 74-75 and Gov. Brief 5-6-7). It appears by this memorandum (Gov. Brief p. 6), that a comparison was made between a copy of the tin-type photograph of the father attached to the Habeas Corpus record in 1890 and his photo-



graph taken 23 years later in 1913. The comparison was made in Washington by Chief Flynn of the Secret Service Division of the Treasury Department.

No notice of this inquiry and no opportunity to rebut it was given the applicant or his father in San Francisco. This is conceded. It is alleged in the petition for a writ of Habeas Corpus that the Secretary of Labor considered matters which were never incorporated in any record had or produced at the Port of San Francisco and which the applicant and his father at no time were given an opportunity to rebut, deny, explain or overcome. (Trans. 5-6). These allegations are not denied but are in fact supported by the memorandum and written reports and decisions had in Washington contained in the record produced in the District Court and quoted in the Government's Brief at pages 4, 5, 6, 7 and 8.

On the strength of the comparison made by Chief Flynn and notwithstanding the evidence adduced in San Francisco and the judgment of the Commissioner and the two prior adjudications by the Department, the Acting Commissioner General, F. H. Larned, on February 14, 1914, recommended the deportation of the son Yep Kim Yuen. (Supplemental memorandum for the Acting Secretary, Record 74-75, Gov. Brief 5-6-7). Nowhere in the records, exhibits or the transcript does it appear that any further action was taken on the Acting Commissioner General's recommendation by the Sec-

retary of Labor. The Supplemental Memorandum for the Acting Secretary and recommendation of deportation referred to bears at the end the legend, "Approved. J. B. D." (Gov. Brief 7), which we are told by Counsel for the Government on page 5 of Government's Brief is the "signature of approval of the Acting Secretary, J. B. Densmore." Counsel for the Government may be right although the record does not bear him out. On November 18, 1913, in the "Memorandum for the Commissioner General," (Record 35-36, Gov. Brief 4), Louis F. Post signs himself the Acting Secretary. Thereafter, so far as the record and exhibits in the case of Yep Kim Yuen are concerned, the signature of an Acting Secretary does not appear. It does appear, however, that an officer "W. J. P." was directed to advise Mr. Wolf, the attorney for the applicant in Washington, of the action and recommendation of the Acting Commissioner General, and the approval of J. B. Densmore. (See note at end of Acting Commissioner General's supplemental memorandum at page 7 of Gov. Brief). It also appears that Mr. Wolf desired an oral hearing before the Acting Secretary. It will be noted that the recommendation of deportation had been approved by J. B. Densmore before Mr. Wolf had been advised. It does not appear that Mr. Wolf was granted an oral hearing. It does appear that two days after the recommendation of deportation and approval by J. B. Densmore, to-wit: on February 17, 1914, the officer "W. J. P." took Mr. Wolf to the Police Headquarters in

Washington, where two "identification experts" of the police department, whose names do not appear, passed unfavorably upon the photograph of the father and the copy of his tin-type taken 23 years before. (Memorandum for consideration in connection with the case of Yep Kim Yuen, quoted on pages 7-8 Gov. Brief). This memorandum was of no value either to Mr. Wolf or to the Department as the case of Yep Kim Yuen had been closed two days prior thereto.

This we claim is a correct recital of what transpired before the Department of Labor in the Yep Kim Yuen case as disclosed by the memoranda with the dates and initialing attached thereto and which appeared for the first time among the records at the port of San Francisco when they were introduced in evidence by the Government at the hearing before the District Court.

The proceedings in the District Court which followed the receipt by the Commissioner of the order to deport the boy are contained in the Transcript and are briefly as follows:

A petition for a writ of Habeas Corpus was presented to the District Court by the father on behalf of his son (Trans. 2-8 inc.). A demurrer to the petition was interposed by the Government. (Trans. 10). An order to show cause was issued (Trans. 9-10). The demurrer was then argued and submitted. Upon the submission of the demurrer, the Government handed to the Court the documents and memoranda of the Immigration Bureau already de-

scribed herein and variously referred to as exhibits and records. This mode of presenting the Government's case to the Court was of the Government's own choosing, and if it makes an imperfect record, it is in no manner the fault of the appellee. In all cases of this character, a return in regular form with a statement of facts in denial of a petition is the proper procedure. At the time of the introduction of this documentary evidence by the Government, the Court called to the stand Dr. John E. Gardiner, Immigrant Inspector and Government Interpreter and expert on Chinese handwriting. Dr. Gardiner had testified before the Department of Labor that the signature of the father Yep Lung Gon and the signature of Yep Lun Gon in the Habeas Corpus proceedings in 1890 were made by the same person. (See Decision of Acting Commissioner General, quoted on page 7 of Gov. Brief.) He gave the same testimony before the District Court. (Ord. Overruling Demurrer. Trans. 11). It is conclusive as to the identity of the father, and his testimony was as much a part of the record as anything else and should be before this Court in the printed Transcript.

Counsel for the Government refers to the fact that John E. Gardiner testified before the District Court as a witness, but he neglects to inform the Court that the witness was called and testified as an expert on Chinese handwriting. The fact that John E. Gardiner testified appears in the Order Overruling the Demurrer (Trans. 11). Dr. John E. Gardiner for



more than thirty years has been the trusted expert of the executive department having charge of the executing of the laws relating to the Exclusion of Chinese. He has also been received as an expert on Chinese handwriting and matters of identification of Chinese by the Courts. Where the authenticity of records or of Chinese documents has been in question it is common knowledge that his judgment has been taken as authority. It is also commonly known that he was the Mr. Vrooman referred to by Judge Hoffman in Tung Yeong's case, and upon whom the District Court relied so completely and to whom the books of the Chinese Six Companies relating to the identity of Chinese were submitted before they were given any weight in Court. Dr. Gardiner at that time was known by the name of his father by adoption.

*In re Tung Yeong.* 19 Fed. 184-187.

When the District Court, passing on the law, overruled the demurrer (Trans. 11), the writ of Habeas Corpus was issued (Trans. 11-12). On the day fixed for a return to the writ, the Government declined to make any further return thereto. In truth, a return to the writ of Habeas Corpus under oath would have been impossible, because in good faith, the officers at this Port could not have denied the political status of the father or the parentage of the son. Under the writ, the boy was brought into Court and was discharged.

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## ARGUMENT.

The identity of the father of the boy is the only disputed question between the appellee and the Secretary of Labor.

The question which was presented to the Court below and which now presents itself to this Court for determination is:

Did the Secretary of Labor have the right to dispute the identity of the father of the applicant and, if so, did he dispute it and render his judgment thereon fairly, in good faith, and without abuse of the discretion vested in him by law?

After a full hearing of the matter before the District Court, at which time the law of the case, and the entire record of the immigration bureau and the evidence adduced before said bureau on the question of the father's identity was fully considered, the Court, after due consideration, decided as a matter of law that the petition alleged a sufficient ground for the issuance of a writ of Habeas Corpus and that the citizenship of the father and his son had been sufficiently established both in fact and in law before the Department of Labor and before the Court itself.

This, we submit, was fully within the powers and duties of the Court. Such course was followed by the District Court of Vermont and was affirmed by the Circuit Court of Appeals of the Second Judicial Circuit in the Case of *United States vs. Chin Len*, 187 Fed. 544, a case very similar to the case at bar.

In that case, Chin Len had been adjudged by a

United States Commissioner in a deportation proceeding to be a citizen of the United States. He made a trip to China and upon his return presented a certified copy of the judgment of the Commissioner as evidence of his citizenship. He was refused admission by the immigration authorities, who among other things held that as a matter of fact he was not the same Chin Len who had been adjudicated a citizen. How far this finding was held to be final, and conclusive on the Court may be seen by the language of the Circuit Court of Appeals.

“The officials charged with the enforcement of the Chinese exclusion acts should give due force and effect to the judgments of the United States Commissioners. The relator presented to the inspector at Richford a duly authenticated judgment showing that he was not an alien but a citizen of the United States entitled to entry without molestation. *Unless that judgment was impeached or the relator was shown not to be Chin Len*, the inspector had no right to refuse him admittance. Neither of these propositions were established. On the contrary, the judgment has been proved genuine and the attempt to show that the relator was not Chin Len has wholly failed.

“The case is much stronger than many of the reported cases where the Chinese persons seeking entrance endeavored by the testimony of witnesses to establish their citizenship. In the present case that fact had been judicially determined by the finding of a competent tribunal. The inspector was not justified in arbitrarily disregarding the judgment. He could prove it to be invalid or fraudulently issued, but he could

not treat it as a nullity upon mere suspicion and conjecture. *He was bound to treat it as valid until its invalidity was established.* No relevant question of fact was presented so far as the Commissioner's judgment was concerned or, indeed, upon the question of identity."

*U. S. vs. Chin Len (Supra 187 Fed. 544-549).*

The case at bar is even stronger than the case of Chin Len just cited. In this case there was no evidence or reason whatever to refute the genuine character of the adjudication of the father's citizenship except perhaps the opinion of Chief Flynn taken secretly in Washington and not even submitted to Counsel at Washington until after the recommendation of deportation had been made and approved, and never produced at the hearing in San Francisco. On the other hand, there was the judgment of the Commissioner of Immigration at San Francisco, the two prior landings of the father as a citizen on his Court record and the testimony of Dr. John E. Gardiner, the Government's own expert, all in favor of the father.

Counsel for the Government cites one case, *Ex parte Long Lock*, 173 Fed. 203, which in reality supports the District Court in its course in the case at bar.

In the case of *Ex parte Long Lock (supra)*, the Court, as did the District Court in this case, considered the evidence on which the judgment of the Secretary was based and the evidence on which the applicant's claim of citizenship was based. Long Lock

claimed to have been adjudged a citizen by a United States Commissioner. The Court said, as quoted in Gov. Brief, page 14:

“Inspector Sperry expressly states here that he did not think the identity of this petitioner with the Long Lock of the certificate had been established. The Department of Commerce and Labor was not satisfied, *and this court is far from satisfied, that this petitioner is Long Lock apprehended and tried before and discharged by Commissioner Johnson in 1897.* Where and when he obtained the certificate issued by Johnson is not shown, except by the bare testimony of the petitioner himself, who bore and was known by a different name in 1905 and 1907, and whose credibility was shaken in his examination before Inspector Sperry. It is not shown that from 1897 to 1905 the petitioner bore the name Long Lock.”

In the case at bar, the Commissioner of Immigration at the Port of San Francisco and the examining inspector were satisfied with the identity of the applicant's father. So also was the United States District Court.

In the case of *Ex parte, Long Lock (supra)*, no one was satisfied with the identity of the applicant. It was obvious that Long Lock was a fraud and the Court properly investigated the evidence and refused to support the fraud.

In the case of *United States vs. Chin Len (supra)*, the immigration authorities were not satisfied with the identity of the Chin Len, but the District Court of Vermont and the Circuit Court of Appeals of the



Second Circuit were both satisfied with his identity and they properly refused to endorse the deportation and banishment of an American citizen.

In these three cases bearing upon the point at issue, an instructive diversity of conditions present themselves with but a single principle involved. In all three cases exactly the same course was followed by the Courts with the same result; that a decision on the merits of the question was reached in each instance. In the case of *Ex parte Long Lock (supra)*, the Court upheld the judgment of the local immigration officers that Long Lock was a fraud; in the case at bar the District Court upheld the judgment of the local officers that Yep Lung Gon was a genuine citizen and rejected the decision of the authorities at Washington based on erroneous conclusions and abuse of discretion; in the case of *United States vs. Chin Len (supra)*, the Court rejected the decision of the immigration authorities based on error, insufficient evidence and unfairness.

#### ABUSE OF DISCRETION AND UNFAIRNESS.

It is, of course, the claim of the Secretary of Labor that he is the sole and final judge as to any question of fact which arises in an immigration proceeding and there is a tendency, in support of this prerogative, to claim that, where the hearing, so-called, was *fair*, no Court can question the Secretary's finding of fact no matter what the evidence may have been on which it was based. This may have been the conception of the law held by the ad-



ministrative officers after the rendition of the case of *United States vs. Ju Toy*, 198 U. S. 253, so often invoked by the Department of Labor as the bar to judicial intervention in immigration cases. A discussion of the case of *Ju Toy* is hardly necessary. We will say, however, that *Ju Toy* sought relief from the Courts upon his bare allegation that he was a citizen of the United States. The effect of the decision was that such representation of itself was not sufficient to give the Court jurisdiction to grant the relief sought. In the next case on the subject however, the case of *Chin Yow vs. United States*, 208 U. S. 8, the relief was again sought in a different way and was granted. The effect of the *Chin Yow* case was that the Courts would grant relief by Habeas Corpus when a fair hearing in good faith of the applicant's claim had been denied by the administrative officers. It has been rather consistently claimed by the Immigration Bureau that the last mentioned case is authority for claim that the Court can grant relief in no other case; i. e., in no case unless it can be shown that a fair hearing, such as it has been construed to be, has been denied. But this contention has been settled by a case still later than the cases of *U. S. vs. Ju Toy* (*supra*) and *Chen Yow vs. U. S.* (*supra*), viz., the case of *Low Wah Sney vs. Backus*, 225 U. S. 468, in which the Court says:

"In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the

proceedings were manifestly unfair that the action of the executive officers was such as to prevent a fair investigation *or that there was a manifest abuse of the discretion committed to them by the statute.*"

That this doctrine has been in the mind of the Court in recent decisions is apparent by the language of the Supreme Court in

*Lewis vs. Frick*, 233 U. S. 291-300.

*Zakonaite vs. Wolf*, 226 U. S. 272-274-275.

As to what constitutes an abuse of discretion is for the Court to decide. It is uniformly held that erroneous conclusions of law on the part of the Secretary of Labor give jurisdiction to the Courts on Habeas Corpus.

It has been held by District Judge Bledsoe in the Southern District of California that a conclusion by the immigration officers based upon a lack of sufficient evidence is an abuse of the discretion vested in them by law.

*Ex parte Bun Chew*, 220 Fed. 387.

*Matter of Iwata*, 219 Fed. 610.

In none of these cases have the doctrines laid down in the cases of the *United States vs. Ju Toy* (*supra*), and *Chin Yow vs. U. S.* (*supra*), been disturbed. In subsequent cases the Courts have but told us what the law is on questions which had not been before the Court in the *Ju Toy* and the *Chin Yow* cases.

Assuming then that the identity of the father was properly subject to question by the immigration officers, we will discuss whether or not it was questioned fairly, in good faith and without abuse of discretion.

On pages 3 and 4 of the Government's brief, the United States Attorney states that

"when the matter was *first* referred to the Secretary of Labor, the Acting Commissioner General reopened the case and made a further examination and determined that the relationship of father and son did exist and that these representations were bona fide, but that *the father was an imposter* in claiming citizenship under the Court record in the writ of Habeas Corpus issued in 1890 to a Chinese person of the name of Yep Lung Gon."

This is not a correct statement. "When the matter was *first* referred to the Secretary of Labor," it was then considered by the Acting Secretary Louis F. Post, whose memorandum of November 18, 1913, appears on the Record pages 35-36, and is quoted in the brief at page 4.

The unfairness and abuse of discretion was inaugurated from the very writing of that memorandum by the Acting Secretary, November 18, 1913. The matter had been taken to the Secretary at Washington by the applicant upon a *question of his nativity* and not upon a question of his father's identity or citizenship. The boy and his father had supposed that the father's citizenship had been settled. It had been proved before a Court of Law in

1890; had stood the acid test of Government inspection on two former occasions and had finally and for the last time received the stamp of approval of the Commissioner of Immigration and the various immigration officers at the Port of San Francisco. The boy's nativity however, did not satisfy the minds of the San Francisco officers and upon that question only the Secretary in Washington was appealed to. There seems a certain element of irony in the attitude of the Acting Secretary and the Acting Commissioner General in Washington in reversing the San Francisco bureau on the question of the lad's nativity and at the same time nullifying the effect of such reversal by questioning the identity of his father.

An inspection of the memorandum of Acting Secretary Post will disclose at once the error and unfairness of his attitude. He states:

“The question of the identity of the father with the person of the same name adjudged in 1890 to be an American citizen, appears to be the decisive one in this case.”

(Record 35-36, Gov. Brief 4).

In this he was wholly wrong. There was no question at that time of the father's identity. It had not been questioned at San Francisco where the application to land had been made by the son. Nothing had transpired in that regard at all except that the father had established his citizenship and his identity to the satisfaction of the Commissioner at San Francisco.



It seems obvious that to raise the question in the manner indicated was a mere whim of the Acting Secretary. He goes on to state:

“As appellant has not yet had his ‘day in court’ on that question, the case is reopened for proof of identity. *In absence of such proof after reasonable opportunity to produce it, exclude.*”

As far as his “*day in court*” is concerned on the question of the identity of his father, we repeat that his father’s citizenship and his identity with the Yep Lung Gon of the Habeas Corpus proceedings had been settled in the matter then pending by the Commissioner at San Francisco as well as on two prior occasions. What other “*day in court*” the Acting Secretary required is impossible of conjecture. Be that as it may, the Acting Secretary, for no valid reason and after favorable judgment by the examining inspector and the Commissioner at the Port where the application was made, arbitrarily and erroneously ordered that the father of the boy produce affirmative proof of his identity with the individual of his same name who had been adjudged in 1890 to be a citizen of the United States, the record of which adjudication was held by the father. In this we say he erred.

#### IDENTITY OF NAME INDICATES IDENTITY OF PERSON.

It is an inference of fact that identity of name indicates an identity of person. The strength of the



inference is augmented when both surnames and given names are identical.

*Sperry vs. Tebbs*, 10 Ohio Dec. 318; 16 Cyc. 1055.

Also where the name is not of common occurrence.

*Sewell vs. Evans*, 4 Q. B. 626.

Or where there is other identification.

*Bennett vs. Libhart*, 27 Mich. 489.

Such as that furnished by a document produced from proper custody.

*Simpson vs. Dismore*, 1 Dowl. P. C. N. S. 357; 5 Jur. 1012; 9 M. & W. 314.

Or similarity of handwriting.

*Sewell vs. Evans* (*supra*).

Names are used as one method of indicating identity of persons.

*Meyer vs. Indiana Nat. Bk.*, 27 Ind. App., 354; 61 N. E. 596.

## BURDEN OF PROOF ON GOVERNMENT.

“The production of the statutory certificate establishes *prima facie* the right to remain, and the burden *then* shifts to the Government which must produce some proof to overcome this *prima facie* evidence or it will be the commissioner’s duty to discharge defendant. The proof should be *clear and convincing*, and until the Government has made out such a case, the holder of the certificate *is not required to make further proof*.

2 Corpus Juris 1102.

*U. S. vs. Hom Lim*, 214 Fed. 456.

But whatever may have been the error or injustice of the Acting Secretary's view the burden was accepted by the applicant's father and affirmative proof of his identity was offered in which was the testimony of Dr. John E. Gardiner, who is accepted by the Government as an expert in Chinese handwriting. Dr. Gardiner compared the signature of the father Yep Lung Gon with the signature of Yep Lam Gon in the Habeas Corpus record and testified that they were the signatures of the same person. This was convincing. The Acting Secretary in his order had said to give the father an opportunity to produce proof of his identity and if he failed to do so to exclude the son. The father produced the proof. But here again occurs another step in the series of blunders and unfairness toward this boy. The Acting Secretary said to exclude *if the proof was not produced*. He did not say to exclude *if the proof was produced*. By plain implication his order carried with it the direction to admit. The original jurisdiction to find the fact in cases of applications for admissions rests with the Commissioner at the port where the application is made. An appeal lies to the Secretary. In the matter under consideration when the proof of the identity of the father was produced at San Francisco, it was the plain duty of the Commissioner to land the boy. His nativity had been established; the father had produced a copy of the adjudication of his citizenship and notwithstanding the unfairness, had complied with the order from Washington and had produced affirmative

proof of his identity. Notwithstanding this the Commissioner at San Francisco still detaining the boy at Angel Island referred the matter back to Washington, *not on appeal for there was nothing then to appeal from*, but for action on a question properly before the bureau at San Francisco and which had already been settled by the Commissioner at San Francisco. However had the Bureau at Washington then decided the question of identity upon the record and evidence produced at the port of San Francisco, the unfairness which already impregnated the proceedings might have been nullified. But such was not to be the case.

Some time after the case was sent back, the opinion of Chief Flynn of the Secret Service T. D. was privately sought on the question of the comparison of the copy of the tin-type on the Habeas Corpus proceedings in 1890 and the photograph of the applicant's father in 1913. No notice or information concerning this private interview with Chief Flynn was given to the applicant, or to his father or to their Counsel in San Francisco or Washington. In fact it may be assumed that no notice of it was given to the Bureau at San Francisco. Thereafter, however, and on February 14, 1914, F. H. Larned, Acting Commissioner General, wrote the excluding decision and it was approved by J. B. Densmore, acting, as we are told by Counsel for the Government, for the Secretary of Labor. (Supplemental Memorandum for the Secretary—Record 74-75. Gov. Brief 5-6-7).

If all the proceedings had been fair and just to the applicant up to this point, the unfair and erroneous conclusions of the Acting Commissioner General as disclosed in this supplemental memorandum, is sufficient to vest the Court with jurisdiction to intervene.

This "supplemental memorandum" is in reality the excluding decision. It is adopted in toto by the initialing of J. B. Densmore.

On November 18, 1913, the Acting Commissioner, Louis F. Post, as we have stated, sent the case back to San Francisco for affirmative proof of the father's identity. (Rec. 35-36; Gov. Brief 4).

The proof was produced as we have heretofore recited in which was the expert testimony of the Government's handwriting expert, Dr. J. E. Gardiner. Yet, in the Supplemental Memorandum and excluding decision written on February 14, 1914, after the case had been sent back to Washington (Gov. Brief 6), the Acting Commissioner General says:

*"The question of citizenship of the alleged father, however, stands practically where it did when the record was previously considered by the Bureau and the Department."*

Are we to infer from this statement that the testimony of Dr. Gardiner had been withheld from the Acting Commissioner General? That cannot be so for he speaks of Dr. Gardiner's testimony in the concluding paragraphs of his decision. (See page 7 Gov. Brief),—and in so doing he flatly contradicts

his most important conclusion, viz.: that question of the alleged citizenship of the alleged father stood practically where it did when it was previously considered by the Bureau and the Department.

Obviously the question did not stand where it had before Dr. Gardiner testified. The Acting Commissioner was wholly wrong. That being so his excluding decision and the approval of J. B. Densmore was wrong.

But the error of the Acting Commissioner goes even deeper into the question. It is plain from his decision that the Acting Commissioner General took no stock whatever in the court record of the father's adjudicated citizenship. A reading of his decision will bring the irresistible conviction that he did not at all consider the question of the father's identity and ignored entirely the court's adjudication. We have pointed out that he ignored Dr. Gardiner's testimony as to the father's identity. Nowhere in the decision does he suggest an answer to the fact shown by the Doctor that the Habeas Corpus proceedings in 1890 bears the signature of this boy's father. No other explanation can be given of his attitude in that regard except that he did not consider the father's *identity* as the question in issue. What he was considering was the father's actual *citizenship*. That is apparent from his remark already quoted.

“that question of *citizenship* of the alleged father stands practically where it did,” etc.



If there is any question remaining as to the actual question which concerned the Acting Commissioner in rendering his decision, an inspection of his language at the beginning of one of his concluding paragraphs, quoted at the bottom of page 6 and at the top of page 7, Gov. Brief, will clear it. He says:

“There is no question but that the father has been a resident in this country for a great many years,—possibly as long as he claims he has, *but this circumstance does not relieve him of the necessity of establishing the contention which he makes of having been born in the United States.*”

Can the error and unfairness of the decision be made plainer? It was not necessary for the father to show that he was *born* in the United States. He had done that in 1890 before the United States District Court. The only thing the Acting Secretary had required of him to do, and that unfairly, was to produce proof of his identity. The father did produce the proof and it is absolutely plain that the Acting Commissioner did not understand the order of the Acting Secretary, or that he ignored the order and arbitrarily held that the father should have produced proof of his *birth* irrespective of the judgment of the Court.

We have already commented on the memorandum of W. J. P. made two days after the writing and approval of the excluding decision.

The only question remaining which might be asked this appellee is what explanation his father might

have made to Chief Flynn's adverse opinion on the photographs, had he been notified of that opinion. Possibly he would have had no explanation to offer, but that did not relieve the Bureau in Washington of giving the applicant notice of the interview with Chief Flynn. The fact is that no explanation was needed as the opinion of Chief Flynn as to the dissimilarity between the photographs could not possibly outweigh Dr. Gardiner's proof of the identity of the signatures. Photographs taken 23 years apart are without doubt different. Signatures vary much less. It appears in the order overruling the demurrer (Trans. 11), that Mr. Herbert Dugan testified before Judge Dooling. His testimony is properly part of the record, and should have been included in the printed Transcript of the Record. The appellee cannot be blamed for its absence. We comment on this testimony therefore because it is proper that this Court should know the character of the evidence which was considered by the District Court when it issued the Writ of Habeas Corpus herein. The father of this appellee had been a servant in Mr. Dugan's home for many years. Mr. Dugan testified that the father had had certain dental work done in which some of his prominent teeth had been extracted and also that he had had an operation on his eyes. We believe that there is somewhere in the mass of exhibits on file a letter from Miss Worley concerning changes in his teeth—but we have been unable to find it. Certainly that would have altered his appearance to an appreciable de-

gree. Had the father known of the investigation in Washington and the opinion of Chief Flynn, he could have submitted this testimony of Mr. Dugan's, both to the Acting Commissioner and to Chief Flynn himself. Had Chief Flynn known of these circumstances, it is safe to say that his opinion on the two photographs would have been different.

Another explanation which might have been made was that the tin-type attached to the Court record of the Habeas Corpus proceedings in 1890 might have been tampered with by some one seeking to take the record of the father for himself. Dr. Gardiner, who is conceded to be one of the most careful and efficient officers in the service of the United States in investigations of such documentary evidence, pointed out this very possibility to the Acting Commissioner, as is shown in the concluding paragraphs of the excluding decision quoted at page 7 Gov. Brief. The Acting Commissioner says:

"He (Dr. Gardiner) suggests the possibility of a substitution of photographs (not altogether unknown in these cases) on the original court record."

In other words, Dr. Gardiner knew that if the photograph in the record was not the photograph of the father, it was certain that it had been changed, because *the signature to the record could not have been altered*, and it was the genuine signature of the father of this appellee. Like all other matters relating to the identity of the father, however, this suggestion also was rejected by the Acting Commis-

sioner. Why? Because, as we have said, he required proof of the nativity of the father and not identity.

Viewing this procedure in its entirety, if it was a fair hearing, in good faith, and without abuse of discretion, then the father himself after many years residence in this country could also be deported to China for his failure to convince the Acting Secretary of his identity and of his birth. Such a thing is inconceivable. Under such a procedure any naturalized citizen of the United States could be arrested and put to the almost impossible task of affirmatively establishing his identity and, what is worse, of affirmatively proving that he was entitled to be naturalized at the time he was made a citizen, to the satisfaction of whosoever should be acting as Secretary of Labor.

The question is one of vast importance and means plainly whether the Courts shall surrender to the Immigration Bureau the last vestige of their jurisdiction over the citizens and residents of this country.

We respectfully submit that the judgment of the District Court should be affirmed.

Respectfully,  
 LUCIUS L. SOLOMONS and  
 CATLIN, CATLIN & FRIEDMAN,  
*Attorneys for Appellee.*





No. 2562

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

SAMUEL W. BACKUS, as Commissioner of  
Immigration at the Port of San Francisco,  
*Appellant,*

VS.

YEP KIM YUEN,

*Appellee.*

## REPLY BRIEF FOR APPELLANT.

JOHN W. PRESTON,

United States Attorney,

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Assistant United States Attorney,

*Attorneys for Appellant.*

Filed this.....day of September, 1915.

FRANK D. MONCKTON, *Clerk.*

By.....*Deputy Clerk.*

**Filed**  
SEP - 1 1915  
F. D. Monckton,  
*Clerk.*



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### REPLY BRIEF FOR APPELLANT.

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At the outset the appellant finds it necessary to challenge the correctness of various statements appearing throughout the appellee's brief that deal with the facts. It is stated on page 2:

After a consideration of the evidence, the Commissioner of Immigration at the Port of San Francisco, decided that the father's claim of citizenship was good, from which position he never afterwards retreated \* \* \*."

On page 3:

"Upon consideration of this evidence, the Commissioner, \* \* \*, did again determine and find that the father was the same Yep

Lung Gon who was adjudged a citizen in 1890, that is to say, he did not alter his original judgment in favor of the father."

On page 12:

"In the case at bar, the Commissioner of Immigration at the Port of San Francisco and the examining inspector were satisfied with the identity of the applicant's father."

On the contrary, it appears from the immigration records in evidence that, although the father was landed in 1898 and again in 1913 because of the opinion expressed in 1898 by a Chinese inspector that he was the person represented by the tin-type photograph in District Court record No. 9071, which person was discharged by the Court in 1890 as a native born citizen of the United States, on the occasion of the father's applying in 1912 for a certificate that would entitle him to go to China and return to this country as a citizen, the Commissioner of Immigration, the Assistant Commissioner of Immigration, the reviewing inspector of the law section and the investigating inspector, all of whom had made a careful comparison of the father personally with a photographic copy of the tin-type photograph in the Court record, were unanimously of the opinion that he was not the person represented by the photograph. In his memorandum in that case, dated July 22, 1912, the said reviewing inspector of the law section, after reciting how the Commissioner, the As-

sistant Commissioner and he had made the comparison just referred to, stated as follows:

“ \* \* \* were it not for the fact that this applicant [father] has been twice landed as the person discharged as shown by the said court record, we would have been disposed to deny the application on the ground that the applicant is not the person discharged by the court.”

As was pointed out in the appellant's opening brief (p. 4) when the case first came to the office of the Secretary of Labor on appeal from the excluding decision of the Commissioner of Immigration, entered upon the ground that the question of relationship had not been satisfactorily proved, Acting Secretary Post passed upon the case as follows:

“The question of the identity of the father with the person of same name decided in 1890 to be an American citizen, appears to be the decisive one in this case. As appellant has not yet had his ‘day in court’ on that question, the case is reopened for proof of identity.

In the absence of such proof after reasonable opportunity to produce it, exclude.”

The appellee in his brief (p. 20) interprets the concluding sentence to mean that if such proof was produced the Commissioner of Immigration should land the applicant without again referring the case to the Department. The correct interpretation is clearly this: the Acting Secretary disposed of the case upon the record before him, ordering the exclusion of the applicant on condition that no evi-



dence of identity was produced after reasonable opportunity for its production was given, but in the event that such evidence was produced he wanted to pass upon it as an appeal matter. This interpretation is borne out by the letter of December 1, 1913, addressed to the Commissioner at San Francisco by the Acting Commissioner-General, which instructed the Commissioner to forward the additional evidence submitted on rehearing to the Bureau of Immigration (immigration record Yep Kim Yuen case). This point was evidently made by the appellee upon the assumption that had it been left with the Commissioner of Immigration to pass upon the evidence of identity afterwards produced, he would have landed the applicant. This assumption is by no means justified, as appears from the opening paragraph of this brief, and from the fact that the Commissioner of Immigration never expressed an opinion contrary to that shown therein to have been held by him.

In his brief (pp. 4 and 5) appellee refers to the supplemental memorandum dated February 14, 1914, of Acting Commissioner-General Larned, which was prepared after evidence had been submitted on the question of identity pursuant to Acting Secretary Post's memorandum above quoted, and which may be found set out in full in appellant's opening brief (pp. 5 to 7 inclusive), stating "Nowhere in the records, exhibits, or the transcript does it appear that any further action was taken on the Acting Commissioner-General's recommenda-

tion by the Secretary of Labor". To meet this statement effectually, it is only necessary to point to the notation. "Approved, J. B. D." (J. B. D. being the initials of J. B. Densmore well known by the Court below and counsel to have been vested at the time in question with authority to perform the duties of the Secretary of Labor in the absence of the Secretary and Assistant Secretary) at the foot of the said supplemental memorandum of the Acting Commissioner-General, and to refer, by way of confirmation of the claim of the appellant that the notation just pointed out and quoted signifies that J. B. Densmore, as Acting Secretary, took action upon the said supplemental memorandum of the Acting Commissioner-General by approving the same, to page 76 of the immigration record in the case of Yep Kim Yuen, which is a copy of a letter dated February 20, 1914, signed by F. H. Larned, Acting Commissioner-General of Immigration, addressed and mailed to the Commissioner of immigration, San Francisco, Cal., the body of which reads as follows:

"The Bureau acknowledges the receipt of your letter of the 6th instant, No. 12916/4, transmitting record of the additional investigation in the case of Yep Kim Yuen.

After carefully considering the evidence presented in the entire record, the Acting Secretary has affirmed your excluding decision."

Appellee contends (pp. 23 and 24 his brief) that the said supplemental memorandum of the Acting

Commissioner-General shows, from a passage quoted therefrom, that the recommendation therein that Yep Kim Yuen be deported, was based upon a misunderstanding, on the part of the Acting Commissioner-General that Acting Secretary Post meant, in passing upon the case as above quoted, to require that evidence *de novo* be produced of the birth of the father of Yep Kim Yuen in the United States, instead of simply requiring that evidence be produced of his identity with the Yep Lung Gon discharged by the Court. That no such misunderstanding existed is readily apparent from the following sentence taken from near the beginning of the said supplemental memorandum of the Acting Commissioner-General:

“At the suggestion of the Acting Secretary (Mr. Post) the case was returned to the San Francisco office in order that the alleged father might have a further opportunity to establish his citizenship by the submission of evidence showing his identity with the person (whom he claims to be) discharged on habeas corpus proceedings as a citizen by the District Court at San Francisco on January 9, 1890 (court record No. 9071).”

Appellee complains (pp. 5 and 6 his brief) that it does not appear that the desire of his Washington attorney, Mr. Wolf, noted at the foot of the said supplemental memorandum of the Acting Commissioner-General, and shown to have been made after the appeal was finally decided by the approval of the said supplemental memorandum by

“J. B. D.” (J. B. Densmore, Acting Secretary), was granted. A reading of the immigration record cannot but impress one that Yep Kim Yuen and Mr. Wolf were shown every consideration by the Bureau of Immigration and the Department of Labor throughout the proceedings. This especially appears from the memorandum of “W. J. P.” (pp. 7 and 8 appellant’s opening brief), dated “2/17/1914”, which evidently refers to what took place after the case was closed and after Mr. Wolf’s request was made. There it is shown that although the case had been disposed of after a most thorough and painstaking investigation, and a most careful consideration of the evidence, the Department was still anxious “that there might be no possibility of mistake”, and accordingly “W. J. P.” went to the identification experts at the District of Columbia police headquarters with Mr. Wolf and secured their opinion upon the question of the identification of the father with the subject of the court record. Does not this indicate that Mr. Wolf in all probability had all the hearing he desired? When it is realized that Congress contemplated that these cases should be disposed of in as prompt and summary a manner as fairness would permit, the solicitude expressed in the “W. J. P.” memorandum must be considered, to say the last, as unusual.

It is stated in various parts of appellee’s brief that Yep Kim Yuen or his attorneys were not given an opportunity to rebut the opinion expressed by Chief Flynn of the Secret Service Division of the



Treasury Department, based upon a comparison of photographs of the father of Yep Kim Yuen and of the tin-type in the Court record, that they did not represent the same person. Presumably a general allegation in the petition (pages 4 and 5 of transcript) was intended to cover this claim of unfairness. No evidence has been offered in support of it, while pages 77 and 79 of the immigration record in Yep Kim Yuen's case shows that it is without foundation. There it appears that when the petition was filed the Commissioner of Immigration telegraphed as follows to the Bureau of Immigration:

Appeal case Yep Kim Yuen, writ applied for one allegation being department considered evidence not in record here and gave no opportunity for rebutting same, meaning possibly opinion chief secret service if advisable forward department's record certified for production in court."

In sending this record requested in the said telegram the Acting Commissioner-General wrote as follows:

"This case was, as the record will show, represented before the Department on appeal by local counsel at all stages, and he was afforded every opportunity to submit evidence in rebuttal of any contained in the record."

The appellant agrees with the appellee's statement (page 9 his brief) that the identity of the father, Yep Lung Gon, is the only disputed question between the appellee and the Secretary of Labor.



The appellee presents the question to be determined by this Court as follows (page 9 his brief):

“Did the Secretary of Labor have the right to dispute the identity of the father of the applicant and, if so, did he dispute it and render his judgment thereon fairly, in good faith, and without abuse of discretion vested in him by law?”

As was contended in the appellant's opening brief, the Secretary had the right to dispute the identity of the father, for the reason that the question of identity was a question purely of fact, and, being a question of fact, the decision of the Secretary thereon was final and not reviewable by the courts, provided, of course, as is laid down in *Low Wah Suey v. Backus*, 225 U. S. 468, that the proceedings were not manifestly unfair and there was not a manifest abuse of discretion.

Appellant (pages 12, 13 and 14 opening brief) cited *Ex parte Long Lock*, 173 Fed. 208, as holding that this question of identity was one of fact. The appellee (pages 9 to 13 inclusive, his brief) furnishes us with another authority on this point, viz., *United States v. Chin Len*, 187 Fed. 544. In that case the court said that had there been evidence to support it, the immigration officials could properly have made a finding that Chin Len was not the person shown by the record to have been discharged by a United States Commissioner. In the absence of any evidence to support it, however, the court held that the finding of the immigration

officials that Chin Len was not the person so discharged, was arbitrary, and constituted an abuse of discretion. In the case of *ex parte* Long Lock, *supra*, it was held that a similar finding, based upon evidence by the immigration authorities was final. In the present case, inasmuch as a similar finding, also based upon evidence, was made, the appellant submits that it cannot be disturbed.

All that is now left for consideration is, was there manifest unfairness or manifest abuse of discretion?

That the investigation was most painstaking and thorough; that Yep Kim Yuen's attorneys were fully advised that the case turned on the question of identity; that they were afforded every opportunity to submit evidence in rebuttal of any contained in the record passed upon by the Acting Secretary; that all of the evidence favorable as well as unfavorable to the claim of identity was carefully weighed; and that the decision of the Acting Secretary was arrived at in the utmost good faith is obvious from a reading of the record of the immigration proceedings.

The evidence favorable to the claim of identity was as follows: that the father of Yep Kim Yuen lived in the United States as far back, approximately, as 1890; that on his return from his two visits to China since that time, one in 1898, and the other in 1913, he was on each occasion landed by the immigration authorities as an American born

citizen by reason of his claiming to have been the Yep Lung Gon shown by the before mentioned Court record to have been discharged as an American born citizen in 1890; and that Dr. John E. Gardner, Inspector and Chinese Interpreter of the Immigration Service, a recognized expert on Chinese handwriting, was of the opinion that the signature as it appeared in the Court record of the Yep Lung Gon discharged was the signature of the father. The evidence unfavorable to the claims of identity was as follows: that all of the immigration officers at the port of San Francisco, from the Commissioner down to the investigating inspector, who considered the question of identity when the father was an applicant for a return certificate in 1913, as well as in the present case, after comparing the father physically with a photographic copy of the tin type photograph of Yep Lung Gon in the Court record, concurred in the opinion that the father was not the person represented by the tin type; that all of the officials of the Department of Labor and the Bureau of Immigration at Washington, from the Acting Secretary down, who considered the case, after comparing photographs of the father with the photographic copy of the tin type in the Court record, concurred in that opinion; and that Chief Flynn of the Secret Service, after making the same comparison made in the Department of Labor and the Bureau of Immigration, also concurred in that opinion. After weighing this evidence for and against the claim, the Acting

Secretary finally came to the conclusion that the identity had not been satisfactorily established. Then, by way of confirmation, the two identification experts of the District of Columbia Police Department, after comparing the photographs of the father and the photograph of the tin type emphatically asserted that they could not possibly be photographs of the same person.

Surely, from this it is preposterous to say that there was a manifest or any abuse of discretion on the part of the Acting Secretary in deciding as he did. Therefore, the fact that the District Court, with the identical record before it that the Acting Secretary based his decision upon, came to a different conclusion did not justify the Court in assuming jurisdiction of the question of fact involved.

A suggestion entirely unsupported by evidence that a photograph other than that of Yep Lung Gon might possibly have found its way into the Court record in question through some carelessness in the clerk's office, was considered by the Acting Secretary and very properly dismissed.

Dated, San Francisco,

September 1, 1915.

Respectfully submitted,

JOHN W. PRESTON,

United States Attorney,

CASPER A. ORNBAUN,

Assistant United States Attorney,

*Attorneys for Appellant.*















